

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT FIREMAN and ANN RAIDER,)
Plaintiffs,)
v.) CIVIL ACTION NO. 05-1740MLW
NEWS AMERICA MARKETING IN-STORE,)
INC.,)
Defendant.)

)

AFFIDAVIT OF CHARLES H. ROUMELIOTIS

1. I, Charles H. Roumeliotis, depose and state as follows:
2. I am an associate at Todd & Weld LLP, and am counsel for Robert Fireman ("Fireman") and Ann Raider ("Raider") (collectively "Plaintiffs") in this action.
3. I make this affidavit based on my personal knowledge and a review of records concerning this litigation
4. Exhibit A hereto is a true and accurate copy of the May 17, 2007 Deposition of Ann M. Raider with highlighted excerpts.
5. Exhibit B hereto is a true and accurate copy of a presentation prepared by Consumer Card Marketing, Inc. ("CCMI") entitled "Three Essential Elements", Bates-labeled FR4897-4901.
6. Exhibit C hereto is a true and accurate copy of excerpts of the May 25, 2007 Deposition of Henri F. Lellouche.

7 Exhibit D hereto is a true and accurate copy of a May 14, 1999 Memorandum from David Devoe, Jr. to John Nallen, Lon Jacobs, and Paul Carlucci regarding CCMI, Bates-labeled NAM01474-NAM01480.

8. Exhibit E hereto is a true and accurate copy of excerpts of the June 13, 2007 Deposition of David Devoe, Jr.

9. Exhibit F hereto is a true and accurate copy of the May 24, 2007 Deposition of Robert N. Fireman with highlighted excerpts.

10. Exhibit G hereto is a true and accurate copy of Robert Fireman's Answers To First Set Of Interrogatories Propounded by the Defendant, dated November 27, 2006.

11. Exhibit H hereto is a true and accurate copy of excerpts of the July 18, 2007 Deposition of Christopher Mixson.

12. Exhibit I hereto is a true and accurate copy of excerpts of the July 17, 2007 Deposition of Martin Garofalo.

13. Exhibit J hereto is a true and accurate copy of a document entitled SmartSource Direct Strategies, March 14, 2002, Management Overview, Bates-labeled FR3740.

14. Exhibit K hereto is a true and accurate copy of a June 1, 2000 email from Ann Raider to Henri Lellouche with the subject "SSD Recognition", Bates-labeled FR0248

15. Exhibit L hereto is a true and accurate copy of a June 1, 2000 email from Ann Raider to Henri Lellouche with the subject "Retailer Summit Meeting", Bates-labeled FR0252.

16. Exhibit M hereto is a October 22, 1999 letter addressed to David Devoe, Jr., Bates-labeled FR0315.

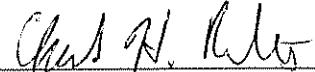
17. Exhibit N hereto is a May 18, 2000 Memorandum from Ann Raider to Henri Lellouche, Bates-labeled FR4745.

18. Exhibit O hereto is a October 17, 2000 Memorandum from Bob Fireman to Chris Mixson, Bates-labeled FR0041.

19. Exhibit P hereto is a September 11, 2000 letter from Robert Fireman and Ann Raider to David Devoe, Jr., Bates-labeled FR0033-FR0035.

20. Exhibit Q hereto is a December 7, 1999 letter from Ann Raider to David Devoe, Bates-labeled FR0043-FR0045.

Signed under the penalties of perjury this 5th day of December, 2007



Charles H. Roumeliotis

EXHIBIT A

Fireman/Raider
VS.
News America Marketing In-Store

Ann M. Raider

Volume 1

May 17, 2007
pp. 1-333

Jones Reporting
COMPANY

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Ann M. Raider

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1 Volume: I
2 Pages: 1-333
3 Exhibits: 38-61

UNITED STATES DISTRICT COURT

6 FOR THE DISTRICT OF MASSACHUSETTS

7 Civil Action No. 05-1740 MLW

9 ROBERT FIREMAN and ANN RAIDER,

0 Plaintiffs,

11 v.

12 NEWS AMERICA MARKETING IN-STORE, INC.,

13 Defendants.

15

16 DEPOSITION OF ANN M. RAIDER

17 Thursday, May 17, 2007

18 10:01 a.m. to 5:19 p.m.

19 HOLLAND & KNIGHT, LLP

20 Ten St. James Avenue, 11th Floor

21 Boston, Massachusetts

22

23

24

Ann M. Raider

APPEARANCES			Page 2	Page 4
1	TODD & WELD, LLP (BY DAVID H. RICH, ESQ.) 28 State Street Boston, MA 02109 (617) 720-2626 drich@toddweld.com Counsel for the Plaintiffs			
2			1 EXHIBITS, continued	
3			2 NO. DESCRIPTION PAGE	
4			3 Exhibit 45 1-page News America Marketing 7	
5			4 Fiscal 2004 Compensation Summary	
6			5 Exhibit 46 1-page Fireman/Raider News America 7	
7			6 Marketing Earn-out Summary	
8			7 Exhibit 47 e-mail from D. DeVoe to J. Rubin 74	
9			8 Dated 11/12/1999, Bates Stamped	
10			9 FR0413	
11	HOLLAND & KNIGHT, LLP (BY GORDON P. KATZ, ESQ.) Ten St. James Avenue Boston, MA 02116 (617) 854-1408 gordon.katz@hklaw.com Counsel for the Defendant		10 Exhibit 48 3-page Summary and Next Steps 83	
12			11 Exhibit 49 1 oversized page, SmartSource 163	
13			12 Direct Billing Report	
14			13 Exhibit 50 2-page e-mail from Stephanie Nix 180	
15			14 To Henri Lellouche Dated 2/8/2000	
16			15 And Attachment	
17			16 Exhibit 51 1-page Memo From Jon Rubin to Steve 183	
18			17 Marquis, et al., Dated 10/18/1999	
19			18 Exhibit 52 1-page Letter Dated 11/10/2000 from 206	
20	ALSO PRESENT:		19 David DeVoe to Robert Fireman and	
21			20 Ann Raider	
22	ROBERT FIREMAN		21 Exhibit 53 Letter Dated 11/20/2000 from Robert 206	
23			22 Fireman and Ann Raider to David	
24			23 DeVoe Bates Stamped NAM01591	
			24 Continued.	
INDEX			Page 3	Page 5
1	DEONENT DIRECT CROSS REDIRECT RECROSS		1 EXHIBITS, continued	
2	ANN M. RAIDER		2 NO. DESCRIPTION PAGE	
3	(BY MR. KATZ) 7		3 Exhibit 54 Letter Dated 12/13/2000 from Robert 206	
4	(BY MR. RICH) --		4 Fireman and Ann Raider to David	
5			5 DeVoe Bates Stamped NAM01560-563	
6			6 Exhibit 55 Letter Dated 1/2/2001 from Michael 209	
7	EXHIBITS		7 Racano to Robert Fireman and Ann	
8	NO. DESCRIPTION PAGE		8 Raider Bates Stamped NAM01564-565	
9	Exhibit 38 Stock Purchase Agreement Bates 7		9 Exhibit 56 e-mail from Michael Racano to 209	
10	Stamped NAM04566-623, and		10 Robert Fireman and Ann Raider	
11	Attachments		11 Dated 2/16/2001 Bates Stamped	
12	Exhibit 39 9-page Complaint and Jury Demand 7		12 NAM00996	
13	Exhibit 40 28-page Ann Raider's Answers to 7		13 Exhibit 57 1-page e-mail String Including 211	
14	First Set of Interrogatories		14 From Michael Racano to David DeVoe	
15	Propounded by the Defendant		15 Dated 3/9/2001	
16	Exhibit 41 7-page Letter Dated 8/13/1999 7		16 Exhibit 58 e-mail from Michael Racano to Ann 214	
17	From David DeVoe, Jr. To Ann Raider		17 Raider Dated 3/17/2002 Bates	
18	Exhibit 42 3-page Amendment to Employment 7		18 Stamped NAM01226	
19	Agreement		19 Exhibit 59 Letter Dated 7/15/2002 from Ann 219	
20	Exhibit 43 1-page News America Marketing 7		20 Raider to John Linguiti Bates	
21	Fiscal 2001 Compensation Summary		21 Stamped NAM01596-598	
22	Exhibit 44 1-page News America Marketing 7		22	
23	Fiscal 2003 Compensation Summary		23 Continued.	
24	Continued.		24	

2 (Pages 2 to 5)

Ann M. Raider

			Page 6	Page 8
1	E X H I B I T S, continued			A. Wellesley, Mass.
2	NO. DESCRIPTION	PAGE	219	Q. And let's begin by talking about the Stock
3	Exhibit 60 Letter Dated 7/19/2002 from			Purchase Agreement between Robert Fireman, Ann
4	Deborah Wolfe to Robert Fireman			Raider, Curtis Smith, John H. Boyles and News
5	And Ann Raider Bates Stamped			America Marketing In-Store, Inc., dated August 13,
6	NAM01393-394			1999 and let me hand to you a document which we've
7	Exhibit 61 2-page e-mail String Including	224		premarked as Raider Exhibit Number 38.
8	From Ann Raider to Donald Jack			MR. RICH: Gordon, we're going to do
9	Dated 11/22/2004			the standard stipulations?
10				MR. KATZ: Yes. While we're taking a
11				look at that document, we'll put the stipulations
12				on the record. All objections and motions to
13				strike except as to form are reserved until the
14				time of trial. The witness may read and sign the
15				deposition transcript, but the signing need not be
16	* Original exhibits retained by Mr. Katz.			in front of a notary.
17				MR. RICH: Fair enough.
18				Q. (BY MR. KATZ) Ms. Raider, you've seen the
19				document we've marked as Exhibit 38 before?
20				A. Yes.
21				Q. This was the agreement which you entered
22				into almost eight years ago --
23				A. Yes.
24				Q. -- correct? And if you take a look at page
			Page 7	Page 9
1	P R O C E E D I N G S		52, you will see that you have signed the	
2	(Exhibits 38 through 46 marked for		agreement, correct?	
3	identification.)		A. No.	
4	ANN M. RAIDER,		Q. Take a look at the preceding page 52.	
5	a witness called on behalf of the Defendant,		A. Yes.	
6	having first been satisfactorily identified by the		Q. Okay. So you have no doubt that you signed	
7	production of her Massachusetts driver's license		the Stock Purchase Agreement of August 13th, 1999?	
8	and duly sworn by the Notary Public,		A. Yes.	
9	was examined and testified as follows:		MR. RICH: Gordon, can I -- I don't	
10	DIRECT EXAMINATION		mean to interrupt you. It seems like in the copy	
11	Q. (BY MR. KATZ) Good morning, Ms. Raider.		you've given to me and the copy you've given to the	
12	You have to say --		witness, there seem to be -- why don't we go off	
13	A. Good morning.		the record a second.	
14	Q. You have to articulate your responses. My		(Off the record.)	
15	name is Gordon Katz and I represent News America		Q. (BY MR. KATZ) Okay. Ms. Raider, going	
16	Marketing In-Store Inc. in the litigation that's		back on the record, so we can establish that you	
17	brought us here today. I'm going to be asking you		signed the 1999 Stock Purchase Agreement?	
18	questions today. If any of my questions are		A. Yes.	
19	unclear, will you let me know?		Q. And Mr. Fireman signed it as well?	
20	A. I will.		A. Yes.	
21	Q. Let's begin by me asking to you state your		Q. And both of you were advised by counsel at	
22	full name for the record.		Goodwin Procter & Hoar throughout the preparation	
23	A. Ann Michaels Raider.		of the document; isn't that correct?	
24	Q. And where do you live?		A. Yes.	

3 (Pages 6 to 9)

Ann M. Raider

Page 10

1 Q. Goodwin Procter, the law firm, reviewed
 2 drafts of the agreement, made comments and gave you
 3 advice, correct?

4 **A. That is correct.**

5 Q. And were you also advised by an accounting
 6 firm during the preparation of the 1999 agreement?

7 **A. Not that I recall.**

8 Q. Did you receive advice from any accountants
 9 during the course of the preparation of the August
 10 13th, 1999 Stock Purchase Agreement?

11 **A. Accountants? Let's see. We had advice
 12 from our controller and we had advice from Les
 13 Charm on the financial aspects.**

14 Q. And your controller was Robert Coughlin; is
 15 that correct?

16 **A. That is correct.**

17 Q. So both Mr. Coughlin and Mr. Charm provided
 18 advice to you during the preparation of the August
 19 13, 1999 Stock Purchase Agreement, correct?

20 **A. Yes.**

21 Q. What were the names of the Goodwin Procter
 22 lawyers who you worked with?

23 **A. The lead lawyer was David Henken, and I
 24 don't recall the other lawyers' names at this time.**

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1 Agreement -- was to document the terms of the sale
 2 of your stock in CCMI to NAM, correct?

3 **A. Yes.**

4 Q. And the agreement covered many subjects
 5 relating to the business CCMI, correct?

6 **A. Yes.**

7 Q. Included in the agreement were provisions
 8 regarding Year 2K? Do you remember that?

9 **A. Y2K.**

10 Q. Y2K? And that was a big issue prior to
 11 January one, 2000, right?

12 **A. I do not recall Y2K being a big issue prior
 13 to the signing.**

14 Q. Well, but it was a big issue in -- in the
 15 economy in general? People were concerned about
 16 Year Y2K?

17 **A. There was press written about Y2K, that is
 18 correct.**

19 Q. And now we can hardly remember it, correct?

20 **A. Right.**

21 Q. Now, the Stock Purchase Agreement of August
 22 13, 1999 was a very important agreement for you
 23 personally, was it not?

24 **A. Yes.**

Page 11

1 Q. Do you remember how many other lawyers
 2 besides Mr. Henken worked on the project advising
 3 you, apart from Mr. Henken?

4 **A. At least two.**

5 Q. And as you mentioned, you also received
 6 advice regarding the agreement from Les Charm, one
 7 of your directors?

8 **A. Yes.**

9 Q. Mr. Charm also negotiated on your behalf
 10 with Mr. DeVoe from News America Marketing,
 11 correct?

12 **A. Yes.**

13 Q. And I'm going to refer to News America
 14 Marketing during this deposition from time to time
 15 as NAM, N-A-M. Did the other two shareholders of
 16 CCMI, Curtis Smith and John Boyles, have any
 17 discussions with representatives of NAM regarding
 18 the business of CCMI prior to the agreement being
 19 signed?

20 **A. No, not that I recall.**

21 Q. None that you're aware of?

22 **A. Not that I recall.**

23 Q. Okay. Now, the purpose of the agreement --
 24 that is, the August 13th, 1999 Stock Purchase

Page 13

1 Q. You had never sold a business before?

2 **A. No.**

3 Q. You're agreeing with me that this was the
 4 first time you had ever sold a business?

5 **A. This is the first time I had ever sold a
 6 business.**

7 Q. And you read the agreement very carefully,
 8 did you not?

9 **A. I did.**

10 Q. Let's turn to page 41 and paragraph 8.1.
 11 Did you read paragraph 8.1 prior to signing the
 12 agreement?

13 **A. Yes.**

14 Q. And you understood this clause, correct?

15 **A. Yes.**

16 Q. And you're aware that clauses like this are
 17 called integration clauses?

18 **A. No, I'm not.**

19 Q. You've never heard that term used before?

20 **A. No, sir.**

21 Q. During your business life, have you seen
 22 other agreements having similar clauses?

23 **A. I do not recall at this time.**

24 Q. Okay. You're unaware as to whether the

Ann M. Raider

<p>1 many contracts which you've negotiated with 2 customers have had agreements which have been -- 3 which have provisions titled either integration 4 clause or entire agreement?</p> <p>5 A. No, sir, I do not recall that specifically. 6 Q. You don't recall seeing clauses like that 7 previously?</p> <p>8 A. No. 9 Q. Okay. Are you aware that provisions like 10 these are commonplace in formal written contracts?</p> <p>11 A. No, sir, I'm not. 12 Q. Now the provision states in substance that, 13 quote, this agreement is a complete statement of 14 all terms of the arrangements between the parties 15 and supercedes any previous agreements and 16 understandings between the parties with respect to 17 those matters. Did I read that correctly?</p> <p>18 A. Yes. 19 Q. Now, you understood that this provision 20 meant that the terms of the agreement trumped any 21 oral promises that you or Mr. Fireman might have 22 made to Mr. DeVoe or anyone else at NAM about CCMI, 23 correct?</p> <p>24 A. No, I'm not.</p>	<p>Page 14</p> <p>1 statement was about us working together. 2 Q. When you say this statement, you're 3 referring to the statement in paragraph 8.1?</p> <p>4 A. About an agreement to work together, that's 5 how I read this, as agreement to work together. 6 Q. No, no, no, but we're just talking about 7 paragraph 8.1.</p> <p>8 A. Right. 9 Q. What did you think that 8.1 meant?</p> <p>10 A. It meant that we had an agreement in 11 context for how we would work together. 12 Q. So is it your view that the language of 13 paragraph 8.1 was subservient to what your 14 understandings were before the agreement was 15 signed? Is that what you're saying?</p> <p>16 A. I'm not sure what you mean by subservient. 17 Q. Well, in your view, did the understandings 18 that you had prior to signing the agreement take 19 precedence over what was in the agreement itself?</p> <p>20 A. No, I wouldn't say that. 21 Q. So you would agree, would you not, that the 22 agreement took precedence over anything that was 23 said prior to the entering into the agreement?</p> <p>24 A. I think the agreement was a formality about</p>
<p>1 Q. You weren't aware that that's what the 2 language of paragraph 8.1 meant?</p> <p>3 A. No. 4 Q. Okay. And you understood that the 5 provision meant that the terms of the agreement 6 trumped any oral promises that Mr. Charm might have 7 made to Mr. DeVoe or anyone else at NAM about CCMI?</p> <p>8 A. No, I'm not. 9 Q. And you understood that the provision meant 10 that the terms of the agreement trumped any oral 11 promises that Mr. Coughlin might have made to 12 Mr. DeVoe or anyone else at NAM about CCMI, are you 13 not?</p> <p>14 A. No, I'm not. 15 Q. And you also understood that this provision 16 meant that the terms of the agreement trumped any 17 oral promises that you thought Mr. DeVoe or anyone 18 else from NAM might have made to you or 19 Mr. Fireman?</p> <p>20 A. No, I am not. When you enter into an 21 agreement to sell a business to a company, you 22 enter into a partnership. The partnership is a 23 conversation that is about two companies coming 24 together for mutual best interest, so this</p>	<p>Page 15</p> <p>1 the discussions had between the two companies. 2 Q. And so in your view, what did paragraph 8.1 3 mean?</p> <p>4 A. That we had an agreement to do business 5 together. 6 Q. Did it mean anything more than that?</p> <p>7 A. No. 8 Q. So the words of paragraph 8.1 didn't have 9 the meaning that one would normally expect of the 10 words that are used?</p> <p>11 A. I don't know what normally means or I don't 12 -- in my context, I believe that what this said is 13 we had an agreement to do business together. 14 Q. Okay. Well, the words that say -- I'll 15 read them again. It says this agreement, together 16 with the schedules hereto, contain and are intended 17 as a complete statement of all the terms of the 18 arrangements between the parties with respect to 19 the matters provided for. Do you understand what 20 that means?</p> <p>21 MR. RICH: Objection. Asked and 22 answered.</p> <p>23 Q. (BY MR. KATZ) Do you understand what those 24 words mean?</p>

5 (Pages 14 to 17)

Ann M. Raider

Page 18

1 **A. He just objected. What am I supposed to**
 2 **do?**
 3 MR. RICH: You can answer if you can.
 4 **A. I will answer that I believe that what this**
 5 **said was that we had an agreement to do business**
 6 **together.**
 7 Q. (BY MR. KATZ) So what about the language
 8 saying that the agreement together with the
 9 schedules is a complete statement of all of the
 10 terms of the arrangements between the parties?
 11 Isn't that what the language says?
 12 **A. I don't believe even the Constitution of**
 13 **the United States talks about every possible**
 14 **conversation about anybody doing business together.**
 15 Q. No, no, but we're not talking about the
 16 Constitution. We're just talking about this
 17 agreement. Let's go back and I'll say it again.
 18 It says this agreement, together with the schedules
 19 hereto, contain and are intended as a complete
 20 statement of all the terms of the arrangements
 21 between the parties. Isn't that obvious as to what
 22 this means?
 23 MR. RICH: Objection. You can answer.
 24 **A. I think it says we have an agreement to do**

Page 20

1 MR. RICH: Objection. You can answer.
 2 **A. I -- I believe that we -- this statement**
 3 **says we had an agreement to do business together in**
 4 **good faith.**
 5 Q. (BY MR. KATZ) That's what you think
 6 paragraph 8.1 says?
 7 **A. That is correct.**
 8 Q. Okay, and where is the word good faith used
 9 in paragraph 8.1?
 10 **A. The word good faith is not stated in that**
 11 **paragraph. It is implied by the nature of two**
 12 **people -- two companies coming together to do**
 13 **business together.**
 14 Q. Now, you knew also that the agreement could
 15 be -- could not be amended except by an instrument
 16 in writing? Isn't that a fact?
 17 **A. I did not know that.**
 18 Q. Okay. Let's take a look at paragraph 8.6.
 19 Could you read that for me?
 20 **A. No provision in this agreement may be**
 21 **amended or modified except by an instrument or**
 22 **instruments in writing signed by the parties**
 23 **hereto. No waiver of any position here shall be**
 24 **construed as a waiver of any other provision. Any**

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1 **business together.**
 2 Q. (BY MR. KATZ) No, doesn't it say that this
 3 document is a complete statement of all of the
 4 terms of the arrangements between the parties?
 5 Aren't those the words used?
 6 **A. Those are the words that are used.**
 7 Q. Thank you. And it goes on to say that this
 8 agreement supercedes any previous agreements and
 9 understandings between the parties with respect to
 10 those matters. Doesn't it say that?
 11 **A. The words are on the page.**
 12 Q. Okay. And when you use the word
 13 supercedes, doesn't that mean that anything that
 14 came prior, any previous agreements and
 15 understandings between the parties with respect to
 16 the matters in the agreement, doesn't this
 17 provision mean that any such previous agreements
 18 and understandings are no longer in effect because
 19 the agreement controls?
 20 MR. RICH: Objection.
 21 Q. (BY MR. KATZ) Isn't that what this
 22 provision means?
 23 **A. I do not know that to be the case.**
 24 Q. Do you have any doubt?

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1 **waiver must be in writing.**
 2 Q. So now you'd agree with me, would you not,
 3 that the agreement couldn't be amended except by an
 4 instrument in writing? Isn't that what this says?
 5 **A. I believe that's what this says.**
 6 Q. Okay. Now, let's take a look at paragraph
 7 8.2. That refers to governing law. You understood
 8 that the agreement was governed by New York law,
 9 correct?
 10 **A. I believe that that's what this says.**
 11 Q. Okay. And that meant you look to New York
 12 law in order to interpret the agreement, right?
 13 **A. It says New York law and any federal court.**
 14 Q. Now, it says this agreement shall be
 15 governed by and construed and enforced in
 16 accordance with the laws of the State of New York?
 17 **A. And any federal court located in such state**
 18 **in connection with the actions.**
 19 Q. No, it then goes on to say the parties
 20 hereto irrevocably consent to the jurisdiction of
 21 the courts of the State of New York and any federal
 22 court located in such state in connection with any
 23 action or proceeding arising out of or relating to
 24 the agreement or the transaction contemplated

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<p>1 hereby. Isn't that what it says?</p> <p>2 A. Yes.</p> <p>3 Q. So there are two different sentences in</p> <p>4 paragraph 8.2. One relates to substantive law,</p> <p>5 that's in the first sentence, and the second</p> <p>6 relates to jurisdiction. Isn't that what paragraph</p> <p>7 8.2 says?</p> <p>8 A. I don't know what substantive law means. I</p> <p>9 don't know what substantive law means.</p> <p>10 Q. But you do agree with me that the document</p> <p>11 says that the agreement shall be governed by and</p> <p>12 construed and enforced in accordance with the laws</p> <p>13 of the State of New York, right?</p> <p>14 A. The agreement states that.</p> <p>15 Q. Okay. And you remember that your side</p> <p>16 wanted Massachusetts law to govern the agreement,</p> <p>17 right?</p> <p>18 A. I don't recall that discussion.</p> <p>19 Q. Are you aware that Mr. Charm had that</p> <p>20 discussion with Mr. DeVoe?</p> <p>21 A. I believe that if he said he did, he did.</p> <p>22 Q. But you settled on New York, right?</p> <p>23 MR. RICH: Objection.</p> <p>24 A. I don't know what I settled on.</p>	<p>Page 22</p> <p>1 business together? That's my recollection as of</p> <p>2 the moment on the \$3 million.</p> <p>3 Q. You said that CCMI had a valuation of much</p> <p>4 greater than \$3 million?</p> <p>5 A. Yes. We did \$8 million in sales.</p> <p>6 Therefore, by its very definition, the company was</p> <p>7 worth at least \$8 million one times earnings.</p> <p>8 Q. Yeah, but the sales aren't earnings.</p> <p>9 A. One times sales. Sorry.</p> <p>10 Q. So where do you derive that principle of</p> <p>11 business?</p> <p>12 A. A company would not sell itself for less</p> <p>13 than what it does in sales and we did comparisons</p> <p>14 of other companies in our space who were selling at</p> <p>15 multiples far greater than sales of one times.</p> <p>16 Q. And who performed those analyses?</p> <p>17 A. Bob and I looked at other companies.</p> <p>18 Q. What other companies did you look at?</p> <p>19 A. I don't recall at the moment, but we could</p> <p>20 certainly take a look at discussions we had.</p> <p>21 Q. As you sit here, you don't remember one</p> <p>22 company that you looked at in reaching your</p> <p>23 conclusion that companies sold at least at a</p> <p>24 multiple of one times gross revenue?</p>
<p>1 Q. (BY MR. KATZ) Well, you signed an</p> <p>2 agreement that specified New York as the governing</p> <p>3 law, right?</p> <p>4 A. I don't know that that was the settlement,</p> <p>5 but the answer is we did sign the agreement that</p> <p>6 says New York.</p> <p>7 Q. Okay. Now, the four sellers of CCMI --</p> <p>8 that is, the four sellers of the CCMI stock --</p> <p>9 agreed to sell their stock for \$2.8 million in</p> <p>10 cash, right?</p> <p>11 A. Yes.</p> <p>12 Q. How was the \$2.8 million arrived at?</p> <p>13 A. As I recall, Mr. DeVoe said that he had</p> <p>14 approved \$3 million for investments in each of</p> <p>15 several companies on a per company basis, that that</p> <p>16 was about the amount of money he could invest in</p> <p>17 each of the companies that he was looking to buy,</p> <p>18 and so the \$3 million came -- was derived at what I</p> <p>19 believe Mr. DeVoe said to me was what he could</p> <p>20 spend for each company. So knowing that, we then</p> <p>21 began a discussion about well, the company -- CCMI</p> <p>22 is today generating over \$8 million in sales and</p> <p>23 has a valuation that is much greater than that, so</p> <p>24 how do we come to a discussion where we can do</p>	<p>Page 23</p> <p>1 A. At the moment, I do not recall it, but I</p> <p>2 know that there were discussions and we could</p> <p>3 probably think about it longer if we --</p> <p>4 Q. But you don't remember as you sit here now?</p> <p>5 A. As of the moment, I don't recall. I'm</p> <p>6 certain that we did that, because we had been</p> <p>7 talked to by other organizations who were looking</p> <p>8 at CCMI as a good company to invest in.</p> <p>9 Q. But you would agree with me that sales</p> <p>10 don't necessarily mean earnings?</p> <p>11 A. That's correct. Sales don't necessarily</p> <p>12 mean earnings.</p> <p>13 Q. And in fact, let's take a look at</p> <p>14 Schedule 4.6 of the Stock Purchase Agreement. Do</p> <p>15 you have that in front of you? It's in the</p> <p>16 financial statements. And I call your attention to</p> <p>17 a document that's called Consumer Card Marketing,</p> <p>18 Inc., income statement for the year ending</p> <p>19 December 31, 1998.</p> <p>20 A. Mm-hmm.</p> <p>21 Q. Have you found it?</p> <p>22 A. Yes.</p> <p>23 Q. And this was CCMI's income statement for</p> <p>24 the year ended December 31, 1998, which CCMI had</p>

7 (Pages 22 to 25)

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1 prepared, correct?
 2 **A. This is a our income statement. I don't**
 3 **know if we prepared it.**
 4 Q. If you didn't prepare it, who would have?
 5 **A. I don't know. You're asking me do I know**
 6 **if we prepared it. The answer is I don't know if**
 7 **we actually prepared it.**
 8 Q. But it was submitted to News America
 9 Marketing in connection with the transaction and it
 10 was appended as a financial statement in
 11 Schedule 4.6, and it says attached with regard to
 12 the Section 4.6 are true and complete copies of the
 13 financial statements of the company. Is that not
 14 correct?
 15 **A. This is the financial statement of the**
 16 **company. I just don't know if we prepared it.**
 17 Q. Well, this -- I mean, you signed the
 18 agreement and the agreement said that the agreement
 19 incorporated the financial statements of the
 20 company, so isn't it a fair statement that at the
 21 time you signed the agreement, you believed this to
 22 be the income statement for the year --
 23 **A. I believe this to be the facts, yes.**
 24 Q. -- you have to let me finish first -- that

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1 it, I don't think we need to remark it.
 2 MR. RICH: Fine.
 3 MR. KATZ: There are some documents
 4 that we will probably remark simply as a
 5 convenience as we march down the road.
 6 Q. (BY MR. KATZ) In any event, Ms. Raider,
 7 have you seen the document that we've marked here
 8 as Coughlin Exhibit 16?
 9 **A. Have I -- I do not recall seeing this exact**
 10 **document.**
 11 Q. You see the Bates stamp letters in the
 12 corner of the pages? The FR -- the FR letters
 13 along with numbers?
 14 **A. Yes, I do see those.**
 15 Q. And you'd agree with me that this
 16 represents a document that was produced by your
 17 counsel on your behalf, correct?
 18 **A. Yes.**
 19 Q. It came from your files?
 20 **A. Mm-hmm. It's written to Bob.**
 21 Q. I'd like you to take a look at what is the
 22 fourth page, Bates stamped page FR 2677, and if you
 23 take a look at this spreadsheet, you'll see that
 24 it's a statement of profit and loss. That's what

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1 you believe the document that is included in
 2 Schedule 4.6 was an accurate income statement for
 3 the year ended December 31, 1998 for Consumer Card
 4 Marketing, Inc.?
 5 **A. Yes.**
 6 Q. Correct?
 7 **A. Yes.**
 8 Q. And you would agree with me that in 1988
 9 the total gross revenue for CCMI was approximately
 10 \$3.7 million?
 11 **A. Yes.**
 12 Q. And if you look at the last line of the
 13 income statement, CCMI is reported to have had a
 14 loss of about \$170,000 for the year ended December
 15 31, 1998; isn't that correct?
 16 **A. Yes.**
 17 Q. Now I'd like you to take a look at a
 18 document which we've marked as Coughlin Exhibit 16.
 19 I think your counsel has it. I can give you
 20 another copy if you'd like.
 21 MR. RICH: That's -- if it's handy, but
 22 if not, that's okay. And are we not -- we're just
 23 using old --
 24 MR. KATZ: Since we've already marked

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1 it says in the upper left-hand corner; do you see
 2 that?
 3 **A. Yes. Yes.**
 4 Q. And it has actuals for 1996, 1997 and 1998;
 5 do you see that?
 6 **A. Yes.**
 7 Q. And would you agree with me that this
 8 document was prepared by Mr. Coughlin?
 9 **A. Yes.**
 10 Q. Okay. And Mr. Coughlin was your
 11 controller?
 12 **A. Yes.**
 13 Q. He controlled the finances of CCMI?
 14 **A. Yes.**
 15 Q. And if you look at 1999 and you go all the
 16 way down to the last line, you'll see written the
 17 number 239K; do you see that?
 18 MR. RICH: I think you meant 1998.
 19 Q. (BY MR. KATZ) I'm sorry. 1998. Excuse
 20 me.
 21 **A. Yes, I do see that.**
 22 Q. And to me, this suggests that he's
 23 indicating that there was a profit in 1998 of
 24 \$239,000?

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<p>1 MR. RICH: Objection.</p> <p>2 Q. (BY MR. KATZ) Do you agree with that?</p> <p>3 A. I don't know the math.</p> <p>4 Q. Okay.</p> <p>5 A. So I don't know what the handwritten notes mean.</p> <p>6 Q. Okay, but you would -- as between this</p> <p>7 239,000 and the \$170,000 loss that's recorded on</p> <p>8 the financial statement that was submitted as an</p> <p>9 exhibit to the Stock Purchase Agreement, which of</p> <p>10 those two numbers do you think is accurate?</p> <p>11 A. I have no way of knowing at this point in time.</p> <p>12 Q. You don't remember?</p> <p>13 A. I don't remember.</p> <p>14 Q. You don't remember whether you had a profit</p> <p>15 or a loss in 1998?</p> <p>16 A. I do not recall.</p> <p>17 Q. Wouldn't that be something that would be</p> <p>18 important to you to remember?</p> <p>19 A. I do not recall what the financial numbers were for 1998.</p> <p>20 Q. Now, in 1997, according to Mr. Coughlin's</p> <p>21 memo, CCMi's earnings were approximately \$400,000?</p>	<p>Page 30</p> <p>1 last full year of sales prior to the acquisition of</p> <p>2 CCMI by News America Marketing, you would agree</p> <p>3 with me that the sales were only \$3.7 million?</p> <p>4 A. I don't --</p> <p>5 Q. That's in exhibit -- that's on Schedule 4.6</p> <p>6 of the Stock Purchase Agreement.</p> <p>7 A. I do not recall the company's sales for that year, nor do I have any recollection that we did not generate consistently the same number of sales year after year, so I can't speak to that.</p> <p>8 Q. But you don't doubt the accuracy of what's</p> <p>9 contained in the Stock Purchase Agreement, do you?</p> <p>10 A. No, I do not.</p> <p>11 Q. So if the financial statement for CCMI for</p> <p>12 the year ending December 31, 1998 said \$3.7</p> <p>13 million, you'd accept that number, would you not?</p> <p>14 A. Yes.</p> <p>15 Q. And that's not \$8 million, right?</p> <p>16 A. \$3.7 million is not \$8 million.</p> <p>17 Q. Now, you received from the \$2.8 million of</p> <p>18 cash that was paid out when the Stock Purchase</p> <p>19 Agreement closed approximately \$920,000, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And Mr. Fireman received \$1.38 million?</p>
<p>1 Do you see that at the bottom of page FR 2677?</p> <p>2 MR. RICH: Objection.</p> <p>3 A. There is a number on the bottom of the page, \$403,000. I don't know what that number is.</p> <p>4 Q. (BY MR. KATZ) Is that consistent with what</p> <p>5 your recollection of the earnings, if any, of CCMI</p> <p>6 were in 1997?</p> <p>7 A. I do not recall financials.</p> <p>8 Q. You don't recall?</p> <p>9 A. No.</p> <p>10 Q. Okay, but you do recall, don't you, that in</p> <p>11 1997, CCMI had gross revenue of about \$7.9 million?</p> <p>12 A. Yes, I believe that is true.</p> <p>13 Q. Okay. And in 1996, CCMI's gross revenue</p> <p>14 was only approximately \$2.5 million; do you see</p> <p>15 that?</p> <p>16 A. I see the number on the page. I don't remember the numbers exactly. I remember it was approaching \$8 million in sales as we approached 1998, but I don't remember the numbers before that. I concentrated on the sales number.</p> <p>17 Q. Not the profit number?</p> <p>18 A. Right. I did not.</p> <p>19 Q. And the last year of sales, prior -- the</p>	<p>Page 31</p> <p>Page 33</p> <p>1 A. I believe that's right.</p> <p>2 Q. And Mr. Smith received \$400,000?</p> <p>3 A. I believe that's right.</p> <p>4 Q. And Mr. Boyles received a hundred thousand</p> <p>5 dollars?</p> <p>6 A. Mm-hmm.</p> <p>7 Q. Did you or Mr. Fireman share any of the</p> <p>8 cash that you received up front with Mr. Adam or</p> <p>9 Mr. Coughlin?</p> <p>10 A. Did we -- they had stock in the company.</p> <p>11 Q. And what did they receive as a result of</p> <p>12 the closing?</p> <p>13 A. We honored their stock value.</p> <p>14 Q. And so what did they receive?</p> <p>15 A. I don't remember the number, but we paid them cash. We paid them for their stock.</p> <p>16 Q. And how much did you pay them?</p> <p>17 A. I don't recall.</p> <p>18 Q. And were Mr. Adam and Mr. Coughlin content</p> <p>19 with what they were paid?</p> <p>20 A. Yes.</p> <p>21 Q. You're sure about that?</p> <p>22 A. Yes. They signed releases.</p> <p>23 Q. And if they signed releases, in your view,</p>

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<p>1 that ended any claim that they might have with 2 respect to their interest in CCMi?</p> <p>3 A. Yes, that is correct.</p> <p>4 Q. Okay. That's what you think a release 5 does? Is that right?</p> <p>6 MR. RICH: Objection.</p> <p>7 A. I don't know what a release does. I know 8 that in the case of -- at the time of the sale, Bob 9 and I made a conscious effort to make whole people 10 who worked hard for us, and they had stock that we 11 had issued them and we gave them money for that 12 stock.</p> <p>13 Q. (BY MR. KATZ) Well, didn't -- really, they 14 had stock options?</p> <p>15 A. Options, right, whatever.</p> <p>16 Q. And were -- you don't remember exactly how 17 much they were paid?</p> <p>18 A. No.</p> <p>19 Q. Were they paid as much as \$10,000?</p> <p>20 A. I don't know.</p> <p>21 Q. So they could have been paid less than 22 \$10,000?</p> <p>23 A. I don't know.</p> <p>24 Q. Okay. Who would know?</p>	<p>Page 34</p> <p>1 Q. And do you remember, was it more than 2 \$5,000?</p> <p>3 A. I don't remember the exact number.</p> <p>4 Q. Well, could it have been as much as \$5,000?</p> <p>5 A. Could it have been?</p> <p>6 Q. Yes.</p> <p>7 A. Is it possible that it could have been?</p> <p>8 Q. No, I'm asking you.</p> <p>9 A. The answer is I don't remember the amount.</p> <p>10 Q. Well, wasn't this significant for you 11 because you were receiving \$920,000, right? Right?</p> <p>12 A. I received \$920,000.</p> <p>13 Q. And you were going to have to make a 14 payment to Mr. Coughlin and Mr. Adam because you 15 promised them, right?</p> <p>16 A. We didn't have to do that. Those options 17 were only if they -- we sold the whole company. We 18 didn't. We only sold a portion of -- we -- those 19 -- I don't remember how the options were 20 constructed that we gave them, but I know that we 21 had no obligation to pay them anything. I remember 22 that Bob and I made a conscious decision to say 23 thank you for their hard work and made a decision 24 to pay them something for those options, and that's</p>
<p>1 A. I -- I think you've have to ask them.</p> <p>2 Q. And where did the money come from that was 3 going to fund the payment that they received for 4 their options?</p> <p>5 A. It would have come from Bob and I.</p> <p>6 Q. Okay. And so you actually made a payment 7 to Mr. Coughlin and Mr. Adam; is that correct?</p> <p>8 A. Um, I -- yes, I believe that's right.</p> <p>9 Q. But as you sit here today, you have no idea 10 as to how much you paid either of them?</p> <p>11 A. That is correct. I don't.</p> <p>12 Q. And can you give me any order of magnitude?</p> <p>13 A. I don't recall.</p> <p>14 Q. Could it have been as much as a hundred 15 thousand dollars?</p> <p>16 A. No, I'm sure it wasn't that much.</p> <p>17 Q. Could it have been as much as \$50,000?</p> <p>18 A. No, I'm sure it wasn't that much.</p> <p>19 Q. Could it have been as much as \$10,000?</p> <p>20 A. Maybe.</p> <p>21 Q. Could it have been as much as \$20,000?</p> <p>22 A. I don't remember the exact number. I don't 23 remember how many options they had; I don't 24 remember how we calculated what the value was.</p>	<p>Page 35</p> <p>1 all I remember.</p> <p>2 Q. And then I'm asking you how much did you 3 pay them?</p> <p>4 A. And I've told you six times. Sir, I would 5 tell you the truth. I do not remember.</p> <p>6 Q. And you can't tell me whether it was more 7 or less than \$10,000?</p> <p>8 A. No, I cannot.</p> <p>9 Q. Okay. And what -- do you have a record in 10 your checkbook?</p> <p>11 A. Maybe.</p> <p>12 Q. Did either Mr. Adam or Mr. Coughlin 13 complain to you that they hadn't been paid as much 14 as they thought they were going to get?</p> <p>15 A. For what?</p> <p>16 Q. For their options.</p> <p>17 A. Not that I recall.</p> <p>18 Q. Now, what else did you receive from News 19 America Marketing in consideration of the sale of 20 your stock in CCMi?</p> <p>21 A. I received nothing but the check.</p> <p>22 Q. Okay. You did receive an employment 23 agreement from News America Marketing, correct?</p> <p>24 A. I did. Mm-hmm.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. And you received as part of the purchase 2 agreement the possibility of earn-out payments, 3 correct?</p> <p>4 A. Yes, that is correct.</p> <p>5 Q. And you also received the possibility of a 6 bonus on the purchase price if the gross margin 7 exceeded certain benchmarks in year one and two, 8 correct?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. And you also, received did you not, 11 forgiveness of a loan CCMi had made to you? Isn't 12 that right?</p> <p>13 A. That is correct.</p> <p>14 Q. And that was worth \$181,524, right?</p> <p>15 A. I don't recall the number.</p> <p>16 Q. But there's -- is that approximately 17 correct?</p> <p>18 A. I don't know. I'd have to look at the 19 number. It's written in the documents.</p> <p>20 Q. Would you take a look at paragraph 4.2.1?</p> <p>21 A. Where would I find 4.2.1? 4.2 --</p> <p>22 MR. RICH: Do you want to give us a 23 page number, if you can --</p> <p>24 MR. KATZ: Mm-hmm.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And as part of the acquisition, the new 2 shareholders were agreeing to forgive that 3 indebtedness --</p> <p>4 A. Yes.</p> <p>5 Q. -- of you; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And why had you taken that money from CCMi?</p> <p>8 A. I took it as a loan.</p> <p>9 Q. And why did you need that?</p> <p>10 A. For personal reasons.</p> <p>11 Q. Okay. And there was also reference in the 12 Stock Purchase Agreement to something called a 13 Raider bonus. Do you remember what that is?</p> <p>14 A. I don't know what you're referring to.</p> <p>15 Q. Okay. If you go down a little bit from -- 16 still on page four -- there is a reference to 17 \$145,000. Do you see that? It's on page four in 18 paragraph C.</p> <p>19 A. Yeah. Right.</p> <p>20 Q. Which shall be paid by the company to 21 Raider not later than April 1, 2000 and will be 22 accrued as an obligation of the company to Raider 23 as of the date hereof, and then it's defined as the 24 Raider bonus. Do you see that?</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. RICH: -- just to move it along?</p> <p>2 A. Here's 4.2, but I don't --</p> <p>3 MR. RICH: I think that's 4.20. I 4 don't know that there is a 4.2.</p> <p>5 A. Point 02? Is that what we're looking for? (Off the record.)</p> <p>6 Q. (BY MR. KATZ) You know what? Let's take a 7 look at page four of the Stock Purchase Agreement, 8 and do you see paragraph C?</p> <p>9 A. Yes.</p> <p>10 Q. And there's reference to something called 11 the Raider receivable?</p> <p>12 A. Yes.</p> <p>13 Q. And it's identified to be in the aggregate 14 amount of \$181,524?</p> <p>15 A. Yes.</p> <p>16 Q. And that is the promissory note which was 17 being forgiven; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And that represented a loan of monies which 19 you had taken from CCMi?</p> <p>20 A. Yes.</p> <p>21 Q. And that was prior to the acquisition?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes, I see that.</p> <p>2 Q. Why was the Raider bonus being granted to 3 you?</p> <p>4 A. They cancelled the loan and gave it back to 5 me in the form of a bonus.</p> <p>6 Q. Well, if they cancel a loan, that means you 7 no longer have to pay money back to the company, 8 right?</p> <p>9 A. Right.</p> <p>10 Q. But now here they're going to give you 11 money, aren't they? Didn't you ultimately receive 12 \$145,000 from the company; that is, NAM?</p> <p>13 A. I actually don't remember exactly how much 14 I received from NAM. I did get a check from them. 15 If it's exactly \$145,000, I don't recall the exact 16 number. They were cancelling the loan and -- and 17 giving me this bonus money; that is correct.</p> <p>18 Q. So it was two benefits you were getting; 19 one, the cancellation of the loan, and the second, 20 you were getting a bonus, right?</p> <p>21 A. I believe that's so.</p> <p>22 Q. And again tell me, why was the bonus being 23 given you? What was the business reason to give 24 you a bonus?</p>

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<p>1 A. You know, I don't recall.</p> <p>2 Q. And then you had a five-year employment 3 agreement with News America Marketing, right?</p> <p>4 A. Yes, that is right.</p> <p>5 Q. And you began with a salary of \$160,000, 6 right?</p> <p>7 A. That's right.</p> <p>8 Q. And each year News America Marketing gave 9 you a salary increase, right?</p> <p>10 A. Yes, that's right.</p> <p>11 Q. And these increases were all discretionary, 12 right?</p> <p>13 A. I don't understand what discretionary means 14 in your terms.</p> <p>15 Q. Well, the agreement itself did not obligate 16 News America Marketing to give you a salary 17 increase in each successive year, did it?</p> <p>18 A. I don't know what the agreement so stated. 19 We'd have to look at the agreement to see those 20 exact words.</p> <p>21 Q. Well, we are in luck, because we just 22 happen to have a copy of the agreement here. Do 23 you see paragraph 5A?</p> <p>24 A. Yes. It says the base shall be reviewed</p>	<p>Page 42</p> <p>1 1 performance of the company was good, you would get 2 a salary increase?</p> <p>3 A. Yes, that is correct.</p> <p>4 Q. That was your expectation?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. And in point of fact, in each year of your 7 employment with News America Marketing, you 8 received a salary increase; is that right?</p> <p>9 A. Yes, that is correct.</p> <p>10 MR. KATZ: Just for the record, we are 11 marking as Exhibit 41 Ms. Raider's employment 12 agreement with NAM dated August 13, 1999.</p> <p>13 A. Yes, but they did in fact violate the 14 employment agreement.</p> <p>15 Q. (BY MR. KATZ) Okay. Well, I'll let your 16 counsel ask you questions about that.</p> <p>17 MR. RICH: Now, are we marking this?</p> <p>18 Have we marked this?</p> <p>19 MR. KATZ: We premarked it, and so that 20 is now Exhibit 41.</p> <p>21 MR. RICH: Okay. Thank you.</p> <p>22 Q. (BY MR. KATZ) Now, in fact, your salary 23 went up immediately upon NAM's acquisition of CCMi, 24 right?</p>
<p>1 annually in accordance with the standard practice 2 of the company.</p> <p>3 Q. And it says the base salary shall be 4 reviewed annually in accordance with the standard 5 practice of the company and notwithstanding the 6 foregoing, your base salary for any given year 7 shall not be less than your base salary for the 8 previous year, right?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. So that meant that they couldn't reduce 11 your base salary?</p> <p>12 A. That is correct.</p> <p>13 Q. But there was nothing here that meant -- 14 that said that they had to increase your base 15 salary, correct?</p> <p>16 A. The statement that it could be reviewed in 17 accordance with the standard practice of the 18 company, the company had a standard practice of 19 giving salary increases and bonuses based on 20 performance, so we were in fact reviewed based on 21 the performance of the company as a whole.</p> <p>22 Q. And your personal performance, right?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. And so if your personal performance and the</p>	<p>Page 43</p> <p>1 A. Yes.</p> <p>2 Q. You were only making \$153,000 at the time 3 of the acquisition in 1999, right?</p> <p>4 A. I do not recall that, actually.</p> <p>5 Q. Well, let's take a look at Schedule 4.13 of 6 the acquisition agreement.</p> <p>7 MR. RICH: 4.1 -- oh, okay.</p> <p>8 A. Okay.</p> <p>9 Q. (BY MR. KATZ) And you've now had a chance 10 to look at Schedule 4.13?</p> <p>11 A. Yes.</p> <p>12 Q. And you'll agree with me that you were 13 making \$153,000 at the time of the acquisition --</p> <p>14 A. Yes.</p> <p>15 Q. -- of CCMi by NAM, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, apart from the \$153,000 in salary, did 18 you receive anything else from CCMi in the way of 19 compensation?</p> <p>20 A. We had car allowances.</p> <p>21 Q. Okay. How much was that worth?</p> <p>22 A. I don't recall.</p> <p>23 Q. And did you receive a car allowance from 24 News America Marketing as well?</p>

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<p>1 A. I did.</p> <p>2 Q. Apart from the car allowance, did you 3 receive anything else in the way of compensation 4 from CCM?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you receive any dividends?</p> <p>7 A. No.</p> <p>8 Q. You never received any dividends?</p> <p>9 A. No.</p> <p>10 Q. So really, after the acquisition by News 11 America Marketing, you not only were getting 12 approximately a million dollars coming from the 13 sale of your stock, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Forgiveness of a loan of about 16 \$181,000, right?</p> <p>17 A. Mm-hmm. Yes.</p> <p>18 Q. Payment of a bonus that was going to come a 19 few months into the acquisition of about \$145,000, 20 right?</p> <p>21 MR. RICH: Objection.</p> <p>22 Q. (BY MR. KATZ) Right?</p> <p>23 A. Payment --</p> <p>24 Q. Payment of a bonus?</p>	<p>Page 46</p> <p>1 Exhibits 44, 45 -- maybe just these two.</p> <p>2 MR. RICH: Which one is --</p> <p>3 MR. KATZ: 44 is 2003 and 45 is 2004.</p> <p>4 Q. (BY MR. KATZ) You'd agree with me, 5 Ms. Raider, that in most years, NAM granted you 6 about \$30,000 as a discretionary bonus under your 7 employment agreement, correct?</p> <p>8 A. The bonus target was a percentage of the -- 9 of your salary.</p> <p>10 Q. And just asking a question, in most years 11 during the five years of your employment agreement, 12 you received approximately \$30,000 as a 13 discretionary bonus under your employment 14 agreement, right?</p> <p>15 A. According to these two years, the answer is 16 yes. On 2003 and 2004, that's correct.</p> <p>17 Q. And in your own memory, isn't it a fact 18 that you received bonuses in the same range, around 19 \$30,000, for the other three years as well?</p> <p>20 A. Probably, yes.</p> <p>21 Q. Okay. Now, Mr. Fireman had an employment 22 agreement with NAM just like you, right?</p> <p>23 A. Yes.</p> <p>24 Q. In fact, he had essentially the same</p>
<p>1 A. Of a bonus, right.</p> <p>2 Q. Which you actually received?</p> <p>3 A. I did.</p> <p>4 Q. And -- and then you were going to get a 5 five-year employment agreement, right?</p> <p>6 A. That is correct.</p> <p>7 Q. Now, back to your employment agreement, you 8 received discretionary bonuses under your NAM 9 employment agreement for each of the five years 10 that the agreement was in effect, right?</p> <p>11 A. According -- I received bonus funds in 12 accordance with the standard practices of NAM as it 13 related to any employee.</p> <p>14 Q. And all of these bonuses were discretionary 15 under your employment agreement, right?</p> <p>16 A. I -- yes.</p> <p>17 Q. Because it says in paragraph 5B the amount 18 of your bonus, if any, will be determined in the 19 sole discretion of the company's board of directors 20 or a committee thereof and shall be based on, among 21 other factors, your performance and the company's 22 performance, right?</p> <p>23 A. That is correct.</p> <p>24 Q. And I think we've marked as exhibits</p>	<p>Page 47</p> <p>1 agreement, didn't he?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. And he, too, got salary increases 4 from News America Marketing, right?</p> <p>5 A. I believe he did.</p> <p>6 Q. And his annual salary from CCM, like 7 yours, was only \$153,000, right?</p> <p>8 A. Some people would say \$153,000 is a very 9 good salary. Only \$153,000 I think is a judgmental 10 statement. The answer is \$153,000 was a solid 11 salary, and yes, we both had \$153,000 in salary.</p> <p>12 Q. Yeah, I'm not disputing that fact. I agree 13 with you that 153,000 -- I use the word only in 14 comparison to other salaries that are in discussion 15 here today. Now, was Mr. Fireman taking anything 16 else out of the company prior to it being acquired 17 by News America Marketing apart from his \$153,000 18 salary?</p> <p>19 MR. RICH: Objection to the form.</p> <p>20 A. I do not believe so.</p> <p>21 Q. (BY MR. KATZ) Okay. He didn't receive 22 dividends?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Okay. He did have an interest, did he not,</p>

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<p>1 in the rent that was being paid by the company to 2 the estate of his father? 3 A. We -- 4 Q. Did he not? 5 A. We used the building owned by the Fireman 6 Trust to operate our company. We paid the Fireman 7 Trust rent as we would have paid any other 8 landlord. The fact that Mr. Fireman's father owned 9 the building was of a benefit to us, because it was 10 convenient and we could easily move into it at the 11 time that we formed the corporation. 12 Q. But in 1999, at the time the acquisition 13 took place, approximately how much a month was 14 being paid in rent for the premises in Braintree, I 15 believe? 16 A. You know, I don't know. I didn't deal on a 17 day-to-day basis with those expenses. Robert 18 Coughlin watched the expenses. I really dealt with 19 the sales and marketing issues of the company. 20 Q. Okay. Well, let's go back to Mr. Fireman's 21 employment agreement. Mr. Fireman, too, was 22 granted discretionary bonuses under his five-year 23 employment agreement with NAM, was he not? 24 A. I believe that's what his agreement said.</p>	<p>Page 50</p> <p>1 NAM vice president; isn't that correct? 2 A. No, I was a senior vice president. 3 Q. I was going to ask that next. So you were 4 not just a vice president, but a senior vice 5 president; isn't that correct? 6 A. Yes. 7 Q. Okay. Was Mr. Fireman also a vice 8 president at NAM? 9 A. Mr. Fireman was general manager of 10 SmartSource Direct. 11 Q. And you considered that to be a position of 12 importance to the company, did you not? 13 A. Yes. 14 Q. Now, as vice president of NAM, or senior 15 vice president of NAM, you had a fiduciary duty to 16 NAM, did you not? 17 MR. RICH: Objection. 18 A. I'm not sure what a fiduciary duty meant. 19 Q. (BY MR. KATZ) You had a duty of care and 20 loyalty to the company, did you not? 21 A. I had a duty to perform my responsibilities 22 in my role of sales and marketing. 23 Q. Okay. And didn't you have a duty also to 24 be loyal to the company?</p>
<p>1 Q. Okay. And for every year except year five 2 of his employment agreement, he received a 3 discretionary bonus, did he not? 4 A. I believe that's so. 5 Q. And he received salary increases just like 6 you? Isn't that fair to say? 7 A. I believe that's so. 8 Q. And you received formal written evaluations 9 by your superiors at NAM during each of the years 10 of your employment with NAM; isn't that correct? 11 A. Yes. 12 Q. And for the most part, the reviews NAM gave 13 you were very favorable, were they not? 14 A. Yes, they were. 15 Q. And for the most part, the reviews given 16 Mr. Fireman during the five years of his employment 17 agreement by NAM were also favorable, were they 18 not? 19 A. I really don't know about Bob's performance 20 reviews. 21 Q. Did he ever complain to you that his 22 reviews were unfavorable? 23 A. I don't believe so. 24 Q. While you were employed by NAM, you were a</p>	<p>Page 51</p> <p>1 MR. RICH: Objection. 2 A. I'm not sure what loyal to the company 3 means. 4 Q. (BY MR. KATZ) Okay. So you -- 5 A. I am a professional executive who has the 6 responsibility to do my job in the best interest of 7 the company. 8 Q. Let me ask you this question. Did you have 9 a duty to use all of your efforts for the benefit 10 of the company insofar as your professional work 11 was concerned? 12 A. Yes. 13 Q. And Mr. Fireman had the same duty, did he 14 not? 15 A. You need to ask Mr. Fireman. 16 Q. What would be your view? 17 A. Mr. Fireman is a professional who did -- 18 Q. No, no, but I'm just asking about duty of 19 loyalty to the company. What was your perception 20 as a senior vice president of News America 21 Marketing of the nature of Mr. Fireman's duty of 22 loyalty to News America Marketing? 23 MR. RICH: Objection. You can answer 24 if you can.</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. Mr. Fireman is a professional. Mr. Fireman 2 came into News America Marketing, as did I, to run 3 and operate our division, to generate profits for 4 mutual best interests of News America Marketing and 5 CCMI. And we conducted ourselves professionally. 6 We had a national reputation of being experts in 7 our field. We used opportunities in building 8 relationships with companies outside of the 9 corporation to do business on behalf of CCMI/NAM, 10 Mr. Fireman is a lawyer by training. He has an 11 impeccable reputation of being an expert in the 12 field of loyalty marketing and has integrity.</p> <p>13 Q. (BY MR. KATZ) Okay. Well, let me ask you 14 this question. I'll phrase it a different way. If 15 you, Ms. Fireman, or Ms. Raider, as a senior vice 16 president of News America Marketing saw someone in 17 the company taking advantage of what could be a 18 corporate opportunity, did you have a duty to 19 report it to NAM senior executives?</p> <p>20 MR. RICH: Objection.</p> <p>21 A. I have no idea what you just asked me, so 22 could you restate the question?</p> <p>23 Q. (BY MR. KATZ) I certainly can. If you saw 24 someone in the company at News America Marketing</p>	<p>1 individual who was working on the side was employed 2 by News America Marketing, would you have an 3 obligation to report what you saw to senior 4 management at NAM?</p> <p>5 MR. RICH: Objection.</p> <p>6 A. I don't think so. People have personal 7 things that we're working on. As long as it has no 8 harm to NAM, I wouldn't report it.</p> <p>9 Q. (BY MR. KATZ) Even though it's in the 10 business area that NAM is involved in?</p> <p>11 A. NAM went into the loyalty card business and 12 the gift card business based on the work that we 13 did with a customer base that we had at the time, 14 and we focused on those energies. We worked 15 extremely hard to build loyalty card and gift card 16 products for our customer base, who are retailers.</p> <p>17 Q. Okay. Now, under your employment 18 agreement, you had a non-competition provision, did 19 you not?</p> <p>20 A. That is correct.</p> <p>21 Q. And Mr. Fireman did as well under his 22 employment agreement; is that right?</p> <p>23 A. If we have exactly the same employment 24 agreement, the answer is yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 take advantage of what could be a corporate 2 opportunity for NAM, did you as a senior vice 3 president of NAM have a duty to report it to senior 4 management?</p> <p>5 MR. RICH: Objection.</p> <p>6 A. I still don't understand. I'm so sorry. 7 You're asking me if I saw someone who saw an 8 opportunity, but did not work on it?</p> <p>9 Q. (BY MR. KATZ) No. If you saw someone 10 employed by NAM working on a project that was in 11 the general business area of NAM as a side project 12 for which NAM would receive no revenue, did you 13 have an obligation to report that to a senior 14 management -- to senior management at NAM?</p> <p>15 MR. RICH: Objection to the form.</p> <p>16 A. I don't know what -- I still don't know 17 what he's asking me. I still don't understand your 18 question.</p> <p>19 Q. (BY MR. KATZ) Okay. Let's -- you guys 20 were in the gift card business, right?</p> <p>21 A. Yes, we were.</p> <p>22 Q. If you saw someone who was working with you 23 working on a gift card project on the side, having 24 nothing to do with News America Marketing, but this</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. And you both were subject to a 2 non-competition provision in paragraph 6.2 of the 3 1999 Stock Purchase Agreement, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Have you ever purchased stock in 6 News Corp.?</p> <p>7 A. I did not have stock in News Corp. I had 8 options from News Corp.</p> <p>9 Q. Okay. And how did you receive options in 10 News Corp.?</p> <p>11 A. I was awarded the options every year.</p> <p>12 Q. Was Mr. Fireman as well?</p> <p>13 A. I don't know.</p> <p>14 Q. So that was an additional benefit that you 15 received as a result of selling your stock to News 16 America Marketing; is that right?</p> <p>17 MR. RICH: Objection.</p> <p>18 A. I -- I do not believe it had anything to do 19 with my selling my stock. I became an employee of 20 News America Marketing. All senior vice presidents 21 are issued stock.</p> <p>22 Q. (BY MR. KATZ) You mean issued options?</p> <p>23 A. Oh, I'm sorry; options, correct. So it had 24 nothing to do with whether I sold the business to</p>

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1 them or not. I was an employee of their
 2 corporation and I was following the rules of their
 3 corporation as it related to salary, reviews, stock
 4 options.

5 Q. Right, but by virtue of the acquisition,
 6 you received the employment agreement, and by
 7 virtue of the employment agreement, you became
 8 eligible to receive options in News Corp.; isn't
 9 that right?

10 A. **My employment agreement had to do with my**
 11 **working for them under -- as it related to CCMI.**
 12 **My reviews and performance had to do with my being**
 13 **an employee of NAM. The fact that I became an**
 14 **employee of NAM afforded me these opportunities,**
 15 **yes. You are correct.**

16 Q. Okay. Now let's talk about your earn-out,
 17 and I'm going to mark as Exhibit 46 a document --
 18 oh, this was premarked. It's a summary of the
 19 earn-out payments which you and Mr. Fireman
 20 received?

21 MR. RICH: It's what number?

22 MR. KATZ: 46.

23 Q. (BY MR. KATZ) And you've already told us
 24 that as part of the Stock Purchase Agreement you

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1 together, and we had an understanding that that --
 2 the market was growing, we had a leadership share
 3 in the market, we had outstanding customer
 4 relationships in the market, we had a business
 5 plan, which David DeVoe agreed to, which said if
 6 they did certain things to support our growth, we
 7 would together enjoy all the revenue and share in
 8 that increased sales and profit, and therefore, an
 9 earn-out calculation was agreed upon based on the
 10 commitments that they made to us to help us grow
 11 our business to \$50 million.

12 Q. Could you go back to the Stock Purchase
 13 Agreement? I think you have it in front of you.
 14 Could you show me where there's any language that
 15 talks about what you just mentioned?

16 A. **Well, it will take me a long time to read**
 17 **the whole document, so we could be here for a**
 18 **while.**

19 Q. We can be here as long as we need to be.
 20 MR. RICH: That's not entirely true.

21 A. **At the time of the sale of the --**

22 Q. (BY MR. KATZ) No, no, no, no. I just want
 23 to know what -- I don't want a speech. I just want
 24 you to answer the question. I asked you to show me

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1 received the opportunity to receive earn-out
 2 payments, right?

3 A. **Yes, that is correct.**

4 Q. And again, you received the opportunity to
 5 receive a bonus on top of the earn-out if the gross
 6 margin exceeded certain benchmarks in years one and
 7 two after the acquisition, right?

8 A. **Yes.**

9 Q. What's the purpose of an earn-out from a
 10 buyer's perspective?

11 MR. RICH: Objection.

12 Q. (BY MR. KATZ) Not your perspective, but
 13 from a buyer's perspective.

14 A. **In my opinion, the purpose of an earn-out**
 15 **in the buyer's perspective is it is to facilitate**
 16 **the growth of the company that they buy and to**
 17 **jointly share in the profits.**

18 Q. There was no guarantee of any earn-out
 19 payment in the Stock Purchase Agreement, correct?

20 A. **I do not know that. There was a commitment**
 21 **by News America Marketing to buy Consumer Card**
 22 **Marketing. So that we could grow the business to**
 23 **\$50 million, they needed to perform certain actions**
 24 **in order to ensure that we would grow profitably**

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1 where there's any language. You don't need to tell
 2 -- you don't need to say anything more. Just tell
 3 me where there's language and identify it by
 4 section number.

5 A. **Will you repeat the question, then, please?**

6 Q. Could you go back to the Stock Purchase
 7 Agreement? Could you show me where there's any
 8 language that talks about what you just mentioned?

9 A. **I mentioned that there was a financial**
 10 **document which stated that each year the company**
 11 **was projected to do X amount of sales, and that**
 12 **financial document was agreed to by David DeVoe.**
 13 **It was based on that financial document that an**
 14 **earn-out calculation was listed in 2.3 and a**
 15 **commitment from NAM on 6.8 that would tell -- that**
 16 **we would earn a certain amount of money and they**
 17 **would perform certain actions.**

18 Q. So it's your position that paragraphs 2.3
 19 and 6.8 document completely what you believe to
 20 have been the arrangement that Mr. DeVoe agreed
 21 upon?

22 MR. RICH: Objection.

23 A. **I do not believe that it documents**
 24 **completely the agreement that Mr. DeVoe agreed**

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<p>1 upon.</p> <p>2 Q. (BY MR. KATZ) But it -- the agreement says</p> <p>3 -- we talked about this earlier in the deposition</p> <p>4 -- that this -- this agreement, together with the</p> <p>5 schedules contained and are intended as a complete</p> <p>6 statement of all the terms of the arrangements</p> <p>7 between the parties with respect to the matters</p> <p>8 provided for and supercedes any previous agreements</p> <p>9 and understandings between the parties with respect</p> <p>10 to those matters. That is the language in</p> <p>11 paragraph 8.1, is it not?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You would agree with me, would you not,</p> <p>14 that the earn-out and the bonus were both</p> <p>15 contingent on how well CCMi performed after the</p> <p>16 acquisition of your stock, right?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. And there was also an agreed procedure to</p> <p>19 determine the proper amount of earn-out for each</p> <p>20 year the earn out provision was in effect, right?</p> <p>21 MR. RICH: Objection.</p> <p>22 A. I'm not sure what proper procedure means,</p> <p>23 but there was a process.</p> <p>24 Q. (BY MR. KATZ) There was a process, and</p>	<p>Page 62</p> <p>1 dispute was to be resolved in accordance with the</p> <p>2 procedure outlined in Section 2.2B of the</p> <p>3 agreement, right?</p> <p>4 A. Yes.</p> <p>5 Q. And 2.2B applied both to the closing</p> <p>6 balance sheet for the transaction in 1999 and the</p> <p>7 earn-out calculations, right?</p> <p>8 A. I don't know if it applied to the closing</p> <p>9 balance sheets. I'd have to look at that. I don't</p> <p>10 know where it says closing balance sheet. This has</p> <p>11 to do with earn-out amount and I don't know if it's</p> <p>12 relevant to the closing balance sheet.</p> <p>13 Q. Well, 2.2B is originally intended to deal</p> <p>14 with disagreements regarding adjustments to the</p> <p>15 closing balance sheet, is it not?</p> <p>16 A. 2.3B talks about the payment of the</p> <p>17 calculation. 2.3C talks about dispute.</p> <p>18 Q. No, I'm talking about 2.2B. 2.2B.</p> <p>19 A. Okay.</p> <p>20 Q. Are you with me now?</p> <p>21 A. Yeah. Got it.</p> <p>22 Q. So 2.2B applied to both the closing balance</p> <p>23 sheet for the transaction 99 and earn-out</p> <p>24 calculations, right?</p>
<p>1 that was in Section 2.3C, correct?</p> <p>2 A. The financial calculation is outlined in</p> <p>3 2.3C. It does not talk about the process.</p> <p>4 Q. Okay. And let's take a look at 2.3C. We</p> <p>5 start, I guess, with 2.3B, and that says within</p> <p>6 45 days following each base earn-out period, the</p> <p>7 buyer should deliver to the principal sellers the</p> <p>8 base earn-out amount payable in respect to the base</p> <p>9 earn-out period then ended, right?</p> <p>10 A. That's what the language says.</p> <p>11 Q. And that meant that within 45 days</p> <p>12 following each base earn-out period the buyer NAM</p> <p>13 was to deliver to you and Mr. Fireman the earn-out</p> <p>14 payable with respect to the earn-out period then</p> <p>15 ended, right? Isn't that right?</p> <p>16 A. Yes.</p> <p>17 Q. And then the sellers, that's you, had 20</p> <p>18 business days following receipt of NAM's</p> <p>19 calculation to submit to NAM written notice setting</p> <p>20 forth in detail the seller's objections, if any, to</p> <p>21 the earn-out calculation, right?</p> <p>22 A. Yes.</p> <p>23 Q. And then, according to paragraph 2.3C, if</p> <p>24 you were to dispute any buyer's calculation, the</p>	<p>Page 63</p> <p>1 A. To my knowledge, 2.2B only has to do with</p> <p>2 the closing balance sheet.</p> <p>3 Q. Okay. Well, let's go back to 2.3C.</p> <p>4 A. Mm-hmm.</p> <p>5 Q. Just trying to -- I don't think this is</p> <p>6 controversial, but I just want to make sure we're</p> <p>7 on the same page. 2.3C --</p> <p>8 A. Mm-hmm.</p> <p>9 Q. -- says that in the event the principal</p> <p>10 sellers desire to dispute any buyer's calculation,</p> <p>11 the principal sellers shall, within 20 business</p> <p>12 days following receipt of such buyer's calculation,</p> <p>13 deliver to the buyer written notice setting forth</p> <p>14 in detail their objections to such buyer's</p> <p>15 calculation, which dispute shall be resolved in</p> <p>16 accordance with the procedure allowed -- outlined</p> <p>17 in Section 2.2B hereof?</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. So that refers us back to 2.2B. Okay?</p> <p>20 Ready to turn the page?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. So we go back to paragraph 2.2B, and</p> <p>23 if you apply paragraph 2.2B to disputes regarding</p> <p>24 earn-outs, the provision tells us that during the</p>

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1 15-day -- 15 business day period following the
 2 delivery of a notice of disagreement between the
 3 buyer and the principal sellers, the buyer and the
 4 principal sellers will attempt to resolve in good
 5 faith any differences which they may have with
 6 respect to any matters specified in such notice of
 7 disagreement and to reduce in writing such
 8 resolution, right?

9 **A. Yes.**

10 Q. Okay. So what this meant is that there
 11 would be a 15-day -- 15 business day period during
 12 which you and Mr. Fireman on the one hand and NAM
 13 on the other would attempt to resolve in good faith
 14 any differences which you had with respect to your
 15 and Mr. Fireman's objections regarding NAM's
 16 earn-out calculations?

17 MR. RICH: Objection.

18 Q. (BY MR. KATZ) Isn't that right?

19 **A. It says we had 15 days to resolve any
 20 unresolved matters, right.**

21 Q. Okay. And then, if there were any
 22 unresolved matters, after 15 days, the matter would
 23 be submitted to Arthur Andersen, LLP, on behalf of
 24 NAM, and you would choose a Certified Public

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1 Arthur Andersen if after discussing your objections
 2 with NAM management you had unresolved matters
 3 regarding your earn-out calculation, right?

4 **A. It says we had a seller's accountant. It
 5 didn't say that we had to select one. Your comment
 6 is we had to select one. We had to have an
 7 accountant work --**

8 Q. You had to designate one?

9 **A. We would designate one.**

10 Q. Yeah, and if you didn't designate one, the
 11 process would stop, right?

12 **A. I don't know about the process stopping.**

13 **It said we would designate an accountant.**

14 Q. Okay. Now, if after 30 days the two
 15 accounting firms were unable to resolve the
 16 disputed issue, then the dispute would be submitted
 17 for final and binding decision to a third
 18 nationally-recognized independent accounting firm?
 19 Isn't that what was called for under the agreement?

20 **A. Yes.**

21 Q. And then once the third accountant made his
 22 final and binding decision, the earn-out would be
 23 paid with interest at 150 basis points above prime
 24 from the applicable base earn-out payment date.

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1 Accountant who would interact with Arthur Andersen
 2 in an attempt to resolve the dispute, right?

3 **A. Well, that's a little difficult, because I
 4 believe at that time, Arthur Andersen went under --
 5 out of business, so.**

6 Q. Well, Arthur Andersen was still in business
 7 in 1999, right?

8 **A. I don't know, but I know that they went out
 9 of business, but the answer was that they would
 10 provide -- we would go to their accountants or we
 11 could pick our own, right.**

12 Q. Well, you would each have an accountant?

13 **A. Right.**

14 Q. And then the accountants would confer?

15 **A. Right.**

16 Q. And the accountants would attempt to
 17 resolve the matter, right?

18 **A. Correct.**

19 Q. But that was a part of the process, right?

20 **A. Yes, that is correct.**

21 Q. Okay. No doubt about it?

22 **A. That was a part of the process.**

23 Q. Okay. And an important part of the process
 24 was you had to select an accountant to work with

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1 Isn't that what the provision provides?

2 **A. Yes.**

3 Q. Now, let's turn to paragraph 6.8 of the
 4 Stock Purchase Agreement, and I'd like you to read
 5 that provision carefully.

6 **A. Okay.**

7 Q. Please read the paragraph carefully.

8 **A. Yes. It is the buyer's --**

9 Q. You don't need to read it into the record.
 10 Just read it to yourself.

11 **A. Mm-hmm.**

12 Q. You were not happy with the inclusion of
 13 this paragraph in the Stock Purchase Agreement in
 14 this form, were you?

15 **A. That is not an accurate statement.**

16 Q. Okay.

17 **A. I was happy with the definition of the
 18 performance that NAM was to provide the company so
 19 that we had a measure in which they were obligated
 20 to do the work that they had promised us to do. I
 21 was not pleased with the statement part of the
 22 paragraph that said that they had sole and
 23 unfettered judgement and that they -- and I -- I
 24 specifically remember speaking to David DeVoe**

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<p>1 directly about this statement and said we were not 2 happy with the way this was worded, and I asked him 3 for a full explanation of what he meant and why it 4 was there or we should strike it. 5 David's comments to me were this. He 6 said he wanted to have it in the agreement. His 7 intention was that NAM had several operating units. 8 We were in this part in the In-Store, News America 9 Marketing In-Store, but they had other legal 10 entities and that he wanted the right to move the 11 new -- the new businesses he was buying to other 12 legal entities if it was in NAM's personal best 13 interest. It was under that discussion and 14 conversation that that particular statement 15 remained in the contract. 16 Q. He was unwilling to take that -- take the 17 language of paragraph 6.8 out, right? 18 A. There were -- I'm -- let's see. He was not 19 -- he was very willing to leave the paragraph 20 stating what we believe were NAM's obligations to 21 CCMI in. He asked to keep the sentence about 22 unfettered judgement in because it had an 23 interpretation from a legal entity point of view, 24 and therefore, he asked to keep it in. And it was </p>	<p>Page 70</p> <p>1 concern, we had a concern about this statement and 2 that Mr. DeVoe specifically gave me clarity on what 3 he meant by this particular statement and that I 4 was satisfied that it was why he wanted it in there 5 and the intentions under which he would use this. 6 Q. Well, let's take a look at the language in 7 paragraph 6.8. It says it is the buyer's current 8 intention to provide support to the business of the 9 company by among other things, one, utilizing 10 buyer's sales force in order to promote the sale of 11 the company's products, two, assisting the company 12 in the creation of long-term relationships with 13 retailers, and three, investing in software and 14 hardware as needed to expand the company's 15 business. I read that correctly, right? 16 A. Yes, sir. 17 Q. In this sentence, NAM does not guarantee 18 that it would provide any particular level of 19 support to the business of the company, right? 20 A. It is the intention means that they -- 21 Q. I just -- please just answer my question; 22 yes or no. 23 A. There is no percentage of commitment 24 defined. </p>
<p>1 under my understanding of his intention and his 2 description of his intention that we moved from 3 that point. 4 Q. Now, Les Charm on your behalf objected to 5 paragraph 6.8 to Mr. DeVoe, did he not? 6 A. I believe that's correct. 7 Q. And did you have any conversations with 8 Mr. Charm about paragraph 6.8? 9 A. I do not recall at this time. 10 Q. And is the only conversation that you had 11 with Mr. DeVoe the one that you just recounted a 12 moment ago? 13 A. I had many conversations with Mr. DeVoe on 14 a regular basis as it related to the intention of 15 us selling our business to CCMI -- CCMI to News. I 16 remember this particular conversation because our 17 lawyers shared with us a concern that they had -- 18 MR. RICH: Wait a minute. Be very 19 careful not to disclose what your lawyers said to 20 you unless you shared it with Mr. DeVoe. 21 A. Okay. I -- 22 Q. (BY MR. KATZ) Well, did you share it with 23 Mr. DeVoe, what your lawyers said? 24 A. I shared with Mr. DeVoe that we had a </p>	<p>Page 71</p> <p>1 Q. Okay. There is no guarantee of any 2 commitment defined, is there? 3 MR. RICH: Objection. 4 (BY MR. KATZ) The word guarantee does not 5 appear, does it? 6 A. The word guarantee does not appear -- 7 Q. Thank you. 8 A. -- but the word intention does. 9 Q. The sentence does not even say that buyer 10 or NAM shall provide support for the business of 11 the company; isn't that correct? 12 A. The word shall is not there. 13 Q. Okay. Now, you have heard, have you not, 14 that it is NAM's policy to add head count only 15 after business materializes? 16 A. I do not know that to be the case. 17 Q. Have you ever heard that expression used -- 18 A. No, sir, I have not. 19 Q. -- that head count follows business? 20 A. No, sir. I have not heard that. In fact, 21 quite the contrary. In the dot com business, they 22 hired a lot of people with no revenue, and 23 therefore, that policy was not something that NAM 24 practiced. </p>

19 (Pages 70 to 73)

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1 Q. And what was the effect in the dot com
 2 world as a whole?
 3 **A. That business continues to operate for NAM**
 4 **today.**
 5 Q. I'm not talking about NAM, but I'm talking
 6 about in the dot com world as a whole where they
 7 added head count before they had revenue?
 8 **A. I do not know the extent of which the**
 9 **market is operating. Many dot com companies are**
 10 **extremely successful today and growing.**
 11 Q. And you would not dispute that many failed
 12 in 2000 and 2001?
 13 **A. In the press, there were statements that**
 14 **several companies failed, yes.**
 15 Q. Okay.
 16 **A. But we are talking about NAM and we are**
 17 **talking about NAM's process and you asked the**
 18 **question specifically about NAM.**
 19 (Off the record.)
 20 (Recess taken.)
 21 (Exhibit 47 marked for identification.)
 22 Q. (BY MR. KATZ) I've shown you, Ms. Raider,
 23 Exhibit 47. Do you have a copy of it?
 24 **A. Mm-hmm.**

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1 Q. Exhibit 47 was an e-mail which Mr. DeVoe
 2 sent to you among others, right?
 3 **A. Yes.**
 4 Q. And in fact, this copy came out of your
 5 files, right?
 6 **A. I don't know that.**
 7 Q. Take a look at the Bates stamp number FR --
 8 MR. RICH: Well, it came from
 9 Mr. Fireman's or Ms. Raider's, so one of the two.
 10 MR. KATZ: Okay.
 11 Q. (BY MR. KATZ) If you take a look at the
 12 text Exhibit 47, you'll see under the heading Ann's
 13 group? Do you see that?
 14 **A. Yes.**
 15 Q. And then it talks about manufacturing and
 16 sales, Kevin Tripp; do you see that?
 17 **A. Yes.**
 18 Q. And then it says hold firm and look to hire
 19 additional head count as sales develop; do you see
 20 that?
 21 **A. I see that statement.**
 22 Q. And you'd agree that that's consistent with
 23 the concept of head count following business,
 24 right?

20 (Pages 74 to 77)

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1 Q. Exhibit 47 was an e-mail which Mr. DeVoe
 2 sent to you among others, right?
 3 **A. Yes.**
 4 Q. And in fact, this copy came out of your
 5 files, right?
 6 **A. I don't know that.**
 7 Q. Take a look at the Bates stamp number FR --
 8 MR. RICH: Well, it came from
 9 Mr. Fireman's or Ms. Raider's, so one of the two.
 10 MR. KATZ: Okay.
 11 Q. (BY MR. KATZ) If you take a look at the
 12 text Exhibit 47, you'll see under the heading Ann's
 13 group? Do you see that?
 14 **A. Yes.**
 15 Q. And then it talks about manufacturing and
 16 sales, Kevin Tripp; do you see that?
 17 **A. Yes.**
 18 Q. And then it says hold firm and look to hire
 19 additional head count as sales develop; do you see
 20 that?
 21 **A. I see that statement.**
 22 Q. And you'd agree that that's consistent with
 23 the concept of head count following business,
 24 right?

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1 MR. RICH: Objection.
 2 **A. I do not believe that's consistent at all.**
 3 Q. (BY MR. KATZ) You don't? Okay. Isn't it
 4 a fact that News America Marketing applies the
 5 principle of head count following business across
 6 the board?
 7 **A. Not that I recall.**
 8 Q. Okay. Let's go to the second sentence of
 9 paragraph 6.8 in the Stock Purchase Agreement.
 10 **A. Okay.**
 11 Q. Okay? You're there?
 12 **A. Yeah.**
 13 Q. I'm going to read the second sentence. It
 14 says notwithstanding the foregoing, buyer shall be
 15 free to operate the company and its affiliates in
 16 its sole and unfettered judgement and sellers shall
 17 have no claims against buyer in connection
 18 therewith as a result of the preceding sentence.
 19 Did I read that correctly?
 20 **A. You read that correctly.**
 21 Q. And we can agree, can we not, that the
 22 second sentence said that you as the buyers had no
 23 right to bring a claim concerning how NAM ran the
 24 CCMi business?

1 MR. RICH: Objection.
 2 **A. I do not believe that's the intent of this**
 3 **document.**
 4 Q. (BY MR. KATZ) By entering into the Stock
 5 Purchase Agreement, you released CCMi from any
 6 future claim regarding how it ran the CCMi
 7 business, did you not?
 8 **A. No, sir, that's not true.**
 9 Q. The second sentence gave NAM the freedom to
 10 operate the CCMi business in its sole and
 11 unfettered discretion; isn't that right?
 12 **A. No, that is not true.**
 13 Q. Even though the words say that?
 14 **A. Mr. DeVoe told me --**
 15 Q. No, no. Just answer my question.
 16 **A. The word stated that is not the case. The**
 17 **whole context --**
 18 Q. Just answer my question, please. The
 19 second sentence says that NAM has the freedom to
 20 operate the CCMi business in its sole and
 21 unfettered judgement. Aren't those what the words
 22 say?
 23 MR. RICH: Objection. That's not what
 24 the words say, but --

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<p>1 A. The words --</p> <p>2 Q. (BY MR. KATZ) It's just a yes or no</p> <p>3 question.</p> <p>4 A. The words say buyer shall be free to</p> <p>5 operate the company and its affiliates in its sole</p> <p>6 and unfettered judgement.</p> <p>7 Q. That's what the words say?</p> <p>8 A. Those are the words.</p> <p>9 Q. You don't dispute that?</p> <p>10 A. I do not dispute the words.</p> <p>11 Q. Now, insofar as the agreement was</p> <p>12 concerned, NAM management was free to make mistakes</p> <p>13 in its management of the CCMI business, was it not?</p> <p>14 A. No, sir, it was not. The intent of this --</p> <p>15 Q. Just answer my questions yes or no. I'm</p> <p>16 going to ask you a lot of questions --</p> <p>17 A. Sure. Sorry.</p> <p>18 Q. -- and if we get long discussions on each</p> <p>19 of them that don't answer the question, we're just</p> <p>20 going to be here longer than we need to be.</p> <p>21 A. Okay. Sorry.</p> <p>22 Q. So just listen to my question. If you</p> <p>23 don't understand it, let me know, but just listen</p> <p>24 to the question and answer it to the best of your</p>	Page 78	<p>1 Q. NAM was free to discontinue business</p> <p>2 activities of CCMI that were no longer profitable,</p> <p>3 was it not?</p> <p>4 A. No.</p> <p>5 Q. NAM was free to discontinue business</p> <p>6 activities of CCMI even if they were profitable,</p> <p>7 was it not?</p> <p>8 A. No.</p> <p>9 Q. NAM was accountable only to its directors</p> <p>10 and shareholders for whatever mistakes it might</p> <p>11 make in operating the CCMI business, was it not?</p> <p>12 MR. KATZ: Objection.</p> <p>13 A. No.</p> <p>14 Q. (BY MR. KATZ) NAM was not accountable to</p> <p>15 you or Mr. Fireman for how it operated the business</p> <p>16 of CCMI after it acquired your stock, was it?</p> <p>17 A. NAM was accountable to Bob Fireman and I.</p> <p>18 Q. And where do you derive that conclusion?</p> <p>19 A. The agreement of this company's sale was in</p> <p>20 good faith that they would help us with their</p> <p>21 actions build the company to \$50 million. There</p> <p>22 was a financial document which was approved by</p> <p>23 David DeVoe which said we had a plan and they were</p> <p>24 to support that plan.</p>	Page 80
<p>1 ability, okay?</p> <p>2 A. Okay.</p> <p>3 Q. NAM was free to set the budgets of the CCMI</p> <p>4 business, was it not?</p> <p>5 A. No.</p> <p>6 Q. NAM was free to decide where to make</p> <p>7 capital expenditures, was it not?</p> <p>8 A. No.</p> <p>9 Q. NAM was free to decide when to make capital</p> <p>10 expenditures, was it not?</p> <p>11 A. No.</p> <p>12 Q. NAM was free to decide when to make</p> <p>13 additional hires, was it not?</p> <p>14 A. No.</p> <p>15 Q. NAM was free to choose who would be your</p> <p>16 supervisors, was it not?</p> <p>17 A. No.</p> <p>18 Q. NAM was free to determine who, if anyone,</p> <p>19 you would supervise, was it not?</p> <p>20 A. No.</p> <p>21 Q. NAM was free to choose what areas of CCMI's</p> <p>22 business would be pursued in the future, was it</p> <p>23 not?</p> <p>24 A. No.</p>	Page 79	<p>1 Q. And where in the Stock Purchase Agreement</p> <p>2 do you find any reference to that document?</p> <p>3 A. That document exists. There are multiple</p> <p>4 copies of that document. And I'm sure you have it</p> <p>5 in all of the boxes somewhere and I do not believe</p> <p>6 it's in this particular statement as it is.</p> <p>7 Q. So you would agree with me that the</p> <p>8 document, which I believe you referred to as your</p> <p>9 business plan, is not incorporated in the 1999</p> <p>10 stock purchase agreement, correct?</p> <p>11 MR. RICH: Objection.</p> <p>12 A. I believe that particular document is not</p> <p>13 included, but it is the basis upon which in good</p> <p>14 faith David DeVoe bought our company with the</p> <p>15 commitment to help it to grow based on that</p> <p>16 financial agreement, and therefore, their actions</p> <p>17 were to support us to grow this business.</p> <p>18 Q. (BY MR. KATZ) NAM did not need to consult</p> <p>19 you with or Mr. Fireman before making a decision</p> <p>20 regarding the operation of the CCMI business, did</p> <p>21 it?</p> <p>22 A. Yes, it did.</p> <p>23 Q. If NAM did consult with you regarding the</p> <p>24 operation of the CCMI business, it did not need to</p>	Page 81

21 (Pages 78 to 81)

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<p>1 accept your opinion, did it?</p> <p>2 A. It had to accept our opinion.</p> <p>3 Q. In point of fact, NAM did consult with you,</p> <p>4 and neither you nor Mr. Fireman were bashful in</p> <p>5 letting the senior executives at NAM know your</p> <p>6 views on the operation of what had been CCMI,</p> <p>7 right?</p> <p>8 MR. RICH: Objection to the form of the</p> <p>9 question.</p> <p>10 MR. KATZ: Yeah, I can break it down,</p> <p>11 because I think it's a compound question.</p> <p>12 Q. (BY MR. KATZ) In point of fact, NAM did</p> <p>13 consult with you about the operation of the CCMI</p> <p>14 business, did it not?</p> <p>15 A. I'm not sure what your definition of</p> <p>16 consult means.</p> <p>17 Q. Well, what's your definition of consult?</p> <p>18 A. NAM did not ask us in advance for our</p> <p>19 opinions when they made decisions, so for example,</p> <p>20 they put a hiring freeze in the company. They did</p> <p>21 not tell -- ask us whether that hiring freeze</p> <p>22 should or should not apply to us. NAM made the</p> <p>23 decision to reorganize their sales force, which was</p> <p>24 the sales force that we were to use to call on</p>	<p>Page 82</p> <p>1 which took place on 11/17/99; do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And do you see you're listed as an attendee</p> <p>4 at this meeting?</p> <p>5 A. I see I'm listed.</p> <p>6 Q. And you remember being present at this</p> <p>7 meeting?</p> <p>8 A. I do not.</p> <p>9 Q. You do not?</p> <p>10 A. I do not.</p> <p>11 Q. Okay. But the attendees listed here are</p> <p>12 Paul Carlucci, right?</p> <p>13 A. Yes.</p> <p>14 Q. And he was the chairman of the company,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Dave DeVoe? What was his position?</p> <p>18 A. CFO.</p> <p>19 Q. Dominick Porco, what was his position?</p> <p>20 A. President.</p> <p>21 Q. So you are at a meeting, you and</p> <p>22 Mr. Fireman, because he's also listed there, right?</p> <p>23 A. He's listed, right.</p> <p>24 Q. Okay. The first thing under the summary is</p>
<p>1 manufacturers. They did not ask our permission</p> <p>2 that they were going to reorganize the sales force,</p> <p>3 and therefore, we had no access to people who they</p> <p>4 had promised us we would have access to. So NAM</p> <p>5 did not consult with us about things that they did</p> <p>6 that directly impacted our business. NAM made a</p> <p>7 decision to take our technical people to</p> <p>8 Connecticut to help them run other parts of the</p> <p>9 business. They made that decision. They did not</p> <p>10 consult with us.</p> <p>11 Q. But they did consult with you on other</p> <p>12 thing, didn't they?</p> <p>13 A. I'm not sure what other things.</p> <p>14 Q. Did you ever attend strategy sessions?</p> <p>15 A. No.</p> <p>16 MR. KATZ: Let's mark as exhibit next</p> <p>17 in order a document called Summary and Next Steps,</p> <p>18 CCMI Strategy Session, 11/17/99, and that is</p> <p>19 Exhibit 48.</p> <p>20 (Exhibit 48 marked for identification.)</p> <p>21 Q. (BY MR. KATZ) You have Exhibit 48 in front</p> <p>22 of you?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Exhibit 48 are meeting notes of a meeting</p>	<p>Page 83</p> <p>1 that Ann and Bob presented their strategy, which</p> <p>2 included strategy overview, P&L review, account</p> <p>3 strategies, and then it goes on for a page</p> <p>4 describing what you presented, right?</p> <p>5 A. Yes.</p> <p>6 Q. You don't have any doubt as you sit here</p> <p>7 today that you participated in the meeting that's</p> <p>8 reflected in this memorandum, right?</p> <p>9 A. I don't recall attending this meeting, but</p> <p>10 if it stated that I was there, I was there.</p> <p>11 Q. So that being the case, it's not a correct</p> <p>12 statement to say that you weren't provided access</p> <p>13 to company management to provide your view as to</p> <p>14 what the strategy of CCMI should be, right?</p> <p>15 A. One meeting does not constitute providing</p> <p>16 access.</p> <p>17 Q. But there were other meetings, too, weren't</p> <p>18 there?</p> <p>19 A. I don't recall other meetings as this -- as</p> <p>20 this meeting.</p> <p>21 Q. But you had plenty of opportunity to talk</p> <p>22 to, send e-mails, attend other executive meetings</p> <p>23 with News America management during the course of</p> <p>24 your five years in News America management; isn't</p>

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<p>1 that right?</p> <p>2 A. I had the opportunity to send e-mails and 3 talk with senior executives. Attending meetings I 4 did not do a lot of.</p> <p>5 Q. But you did some of, right?</p> <p>6 A. Um, meetings -- for what purposes? Did I 7 attend meetings with other people in News America?</p> <p>8 Yes.</p> <p>9 Q. Thank you. We can agree, can we not, that</p> <p>10 all of NAM's business decisions had one purpose,</p> <p>11 and that was maximizing company profit; isn't that</p> <p>12 right?</p> <p>13 MR. RICH: Objection.</p> <p>14 A. I don't know that that's the sole stated 15 goal of NAM, maximize profit.</p> <p>16 Q. (BY MR. KATZ) There's no other goal that</p> <p>17 you're aware of, right?</p> <p>18 A. There's no other -- I don't know that -- I 19 don't know the list of goals. I know that 20 certainly earning a profit was important.</p> <p>21 Q. Are you aware of any other goal that New</p> <p>22 America Marketing had in connection with any of the</p> <p>23 decisions that it made regarding CCM?</p> <p>24 A. As it related to CCM?</p>	<p>Page 86</p> <p>1 that does not increase profits; in fact, it takes 2 profits down, so I don't know --</p> <p>3 Q. But that's not the intent, right? The</p> <p>4 intent is to maximize profit. You may make the</p> <p>5 wrong decision, but your intent is always to</p> <p>6 maximize profit, right?</p> <p>7 A. I'm not sure that's an exact statement.</p> <p>8 Q. I mean, what else does a company do besides</p> <p>9 maximize profit? That's the only objective that a</p> <p>10 business entity has; isn't that right?</p> <p>11 A. I don't know that that's true.</p> <p>12 Q. But you don't know of any objective that</p> <p>13 any New America Marketing executive had in his</p> <p>14 management of New America Marketing other than</p> <p>15 maximizing profit?</p> <p>16 A. No. I just said to you that I believe one 17 of their objectives was to increase market share, 18 which does not necessarily mean they would maximize 19 profit. It meant that they would increase share, 20 which would cost them profit in a period of time.</p> <p>21 Q. But wouldn't that be ultimately to gain</p> <p>22 profit in the long term, even if it meant it may be</p> <p>23 a cost in the shorter term?</p> <p>24 A. Possibly.</p>
<p>1 Q. Yes.</p> <p>2 A. I don't know what their goals were as 3 related to CCM, because -- I have -- I am not 4 aware of what their goals were with CCM.</p> <p>5 Q. Okay. As far as you're concerned, you're</p> <p>6 not aware of any goal that any NAM executive had</p> <p>7 other than maximizing profit? Isn't that a fair</p> <p>8 statement?</p> <p>9 MR. RICH: Objection.</p> <p>10 A. NAM's executive goal for -- talked about 11 other topics like increasing market share in their 12 base business or things like that, so are you -- I 13 guess are you talking about NAM, or are you talking 14 about CCM?</p> <p>15 Q. (BY MR. KATZ) I'm talking about NAM. I'm</p> <p>16 talking about NAM. NAM had one goal, maximize</p> <p>17 profit, right?</p> <p>18 A. I do not believe that's so.</p> <p>19 Q. But what other goal did they have?</p> <p>20 A. They had their goal of increasing market share.</p> <p>22 Q. But isn't increasing market share for the</p> <p>23 purpose of maximizing profit?</p> <p>24 A. But sometimes you increase market share and</p>	<p>Page 87</p> <p>1 Q. Okay. So wouldn't you agree with me that</p> <p>2 every decision that NAM made was for the purpose of</p> <p>3 maximizing profit?</p> <p>4 MR. RICH: Objection.</p> <p>5 A. I don't know that to be true.</p> <p>6 Q. (BY MR. KATZ) But you're not able to</p> <p>7 identify any other purpose that NAM had in</p> <p>8 connection with the management of its business</p> <p>9 other than maximizing profit?</p> <p>10 A. No. I've stated to you three times. I 11 know that they wanted to increase market share. 12 Increasing market share may not be maximizing 13 profit; not in the short run, not in the long run. 14 It may cost them a lot of money to maximize their 15 market share.</p> <p>16 Q. Okay. Well, let me ask this question. So</p> <p>17 apart from increasing market share and maximizing</p> <p>18 profit, you're not aware of any other purpose that</p> <p>19 executives at New America Marketing had other than</p> <p>20 those?</p> <p>21 A. That's not true. They wanted to penetrate 22 new channels. They wanted to penetrate new 23 markets. They had many, many general goals as a 24 corporation.</p>

23 (Pages 86 to 89)

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<p>1 Q. Are you aware of any other specific goals 2 that New America Marketing had other than the ones 3 that you've just identified? 4 A. I was not allowed to sit in the strategy 5 sessions for New America Marketing. I never 6 attended the strategy sessions for New America 7 Marketing. Therefore, I can't tell you exactly 8 what all of their goals are. I can only report to 9 you what I remember hearing on the management 10 meeting calls periodically. I did not sit in any 11 of the New America Marketing strategy sessions as 12 related to New America Marketing.</p> <p>13 Q. Okay. For the most part, you'd agree that 14 NAM's business decisions were pretty good; isn't 15 that a fact?</p> <p>16 MR. RICH: Objection.</p> <p>17 A. I don't -- I don't know what that means.</p> <p>18 Q. (BY MR. KATZ) Well, NAM increased its 19 profit every year while you were employed at New 20 America Marketing; isn't that right?</p> <p>21 A. No, I believe that's not right. I believe 22 one year they lost profits.</p> <p>23 Q. As a company as a whole?</p> <p>24 A. Yes, I believe that's right. I think one</p>	<p>Page 90</p> <p>1 the term marginalized to describe how you felt you 2 were being treated by NAM executives, right? 3 A. That's correct. 4 Q. And it's a fair statement that you began to 5 feel marginalized even before the deal closed, 6 right? 7 A. I don't know that to be true. 8 Q. In fact, you got some bad vibes during the 9 negotiation process, didn't you? 10 A. We entered into the negotiation process to 11 do -- to go forward to build a corporation 12 together. We would never have consummated the deal 13 if we thought they were not going to be dealing in 14 good faith. 15 Q. But there were provisions in the written 16 agreement that made you uncomfortable; isn't that 17 right? 18 A. There were provisions in the agreement 19 where I asked for clarification. The whole context 20 of the agreement was that we would work together to 21 build profits together as a newly formed group. 22 Q. But the fact that you had to ask for 23 clarification made you a little uneasy; isn't that 24 right?</p>
<p>1 year they did not do well profit-wise. 2 Q. And what year was that? 3 A. I think it was 2001 or 2002, they had a 4 difficult year financially. 5 Q. So you would be surprised to learn that 6 they've had seven successive years of increased 7 profit? 8 A. Yes, I would, because one year I believe 9 that they had a very difficult time. 10 Q. Okay. Let's take a look at the complaint 11 in this case, which I think we've marked as 12 Exhibit 39. Ms. Raider, you met with counsel 13 before the complaint was filed? 14 MR. RICH: You can answer that yes or 15 no. 16 A. Yes. 17 Q. (BY MR. KATZ) And the complaint was filed 18 on August eighth, 2005? 19 A. Yes. 20 Q. But you -- it's a fair statement that you 21 began experiencing the problems you relate in the 22 complaint as early as 1999; isn't that right? 23 A. That's correct, yes. 24 Q. And in your interrogatory answers, you use</p>	<p>Page 91</p> <p>1 MR. RICH: Objection.</p> <p>2 A. I am not a lawyer. I am a business person. 3 I asked for clarification to make sure that we were 4 entering into the good faith agreement to build a 5 company together. 6 Q. (BY MR. KATZ) But you were uneasy, and 7 that's why you had to ask for clarification; isn't 8 that right? 9 A. I ask a lot of questions. 10 Q. I understand that, but you were uneasy in 11 the summer of 1999, and that's why you had to ask 12 for clarification; isn't that right? 13 MR. RICH: Objection.</p> <p>14 A. I cannot -- I would not characterize how I 15 felt in 1997 -- 16 Q. (BY MR. KATZ) 1999. 17 A. Right. 1999, as we began this process to 18 sell the company, I cannot say that I was uneasy. 19 I was asking for the business clarifications. 20 Q. But as we get toward the signing of the 21 agreement and you see paragraph 6.8 and you see the 22 power that News America has and you ask for 23 clarification, you -- you were concerned; isn't 24 that right?</p>

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<p>1 MR. RICH: Objection.</p> <p>2 A. I did not perceive News America to have</p> <p>3 significant power. They were buying multiple small</p> <p>4 businesses which were forward-thinking, which had</p> <p>5 trends in the industry which they had no experience</p> <p>6 in, and that they saw there was multiple</p> <p>7 opportunities, and therefore, I believed that we</p> <p>8 were entering into an agreement with a corporation</p> <p>9 that saw the business trends that they had no</p> <p>10 experience in that they could work with us in one</p> <p>11 part together to move forward. I did not see them</p> <p>12 as a gigantic corporation. I saw them as a</p> <p>13 business partner who had the smart sense to want to</p> <p>14 work with this company to move forward in a part of</p> <p>15 the business practice where they were not at all</p> <p>16 having any experience.</p> <p>17 Q. (BY MR. KATZ) But you saw that News</p> <p>18 America Marketing was going to have sole and</p> <p>19 unfettered discretion to run the business, right?</p> <p>20 That was in the agreement?</p> <p>21 MR. RICH: Objection.</p> <p>22 A. That was not the intention of the</p> <p>23 conversation that I had with David DeVoe. I</p> <p>24 explained that to you. There was a precise</p>	<p>1 in here and shouldn't we take it out, and he said</p> <p>2 this is why it's in here and this is why I would</p> <p>3 like it in here. He did not say unequivocally to</p> <p>4 my knowledge that I recall at the moment.</p> <p>5 Q. And where were you when you had this</p> <p>6 conversation with Mr. DeVoe?</p> <p>7 A. I was sitting in the conference room at 165</p> <p>8 Wood Road, which is CCMI's offices.</p> <p>9 Q. And where was Mr. DeVoe?</p> <p>10 A. On the phone.</p> <p>11 Q. And this was during the summer of 1999?</p> <p>12 A. Yes.</p> <p>13 Q. And again, Mr. DeVoe said to you what in</p> <p>14 response to your request that paragraph 6.8B be</p> <p>15 taken out?</p> <p>16 A. I asked -- I asked David -- we worked</p> <p>17 together on the definition of the performance that</p> <p>18 NAM would agree to do on behalf of the company so</p> <p>19 we had some milestones of what they committed to do</p> <p>20 as we worked together in good faith to get this</p> <p>21 business transaction done to grow the company. The</p> <p>22 goal was to grow the company to \$50 million. That</p> <p>23 was the plan. And when the sentence was there, I</p> <p>24 asked David why is this sentence here and what does</p>
<p>1 conversation where I asked David, could you please</p> <p>2 explain why this was here and why we should take it</p> <p>3 out, and he explained to me that he wanted it in</p> <p>4 there so that he could change the legal entities in</p> <p>5 NAM's best interest. He wanted the right to do</p> <p>6 that and that's why it was that statement was in</p> <p>7 there.</p> <p>8 Q. (BY MR. KATZ) So you wanted him -- it</p> <p>9 would have been your preference if he would have</p> <p>10 taken that statement out? Is that a fair</p> <p>11 statement?</p> <p>12 A. Yes.</p> <p>13 Q. And you wanted him to take it out?</p> <p>14 A. I asked him about taking it out.</p> <p>15 Q. And he said no?</p> <p>16 A. And he said this is what it means.</p> <p>17 Q. But he said no? He said I will not take it</p> <p>18 out?</p> <p>19 A. He did not use those words. He said this</p> <p>20 is what it means and this is why it is there. He</p> <p>21 did not say unequivocally to me. I mean, he may</p> <p>22 have said it to someone else. I do not recall him</p> <p>23 saying no, I am not taking this out. I said David,</p> <p>24 can you explain to me what this means and why is it</p>	<p>1 Page 95</p> <p>1 it mean, and that's when he gave me the answer that</p> <p>2 I have reported to you.</p> <p>3 Q. And just so I'm clear, could you give me</p> <p>4 that answer one more time?</p> <p>5 A. He said I would like the statement in there</p> <p>6 because we have different legal entities and I want</p> <p>7 the right to move you from one legal entity to</p> <p>8 another and I don't want to have that issue, and</p> <p>9 that was the explanation that I received.</p> <p>10 Q. And you accepted it?</p> <p>11 A. I did. I trusted the man who I was going</p> <p>12 to work with to build a company to \$50 million. He</p> <p>13 committed to performance and I believed he was</p> <p>14 acting in good faith that we would move forward</p> <p>15 together.</p> <p>16 Q. Now, you had a celebration following the</p> <p>17 close of the Stock Purchase Agreement?</p> <p>18 A. I don't know. I don't remember.</p> <p>19 Q. You went out to dinner?</p> <p>20 A. Bob Fireman and I went out to dinner. No,</p> <p>21 I don't know if we went to dinner afterwards. I</p> <p>22 don't know the answer.</p> <p>23 Q. Did you celebrate with your family?</p> <p>24 A. No. Actually, I was at the Cape. My</p>

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<p>1 family wasn't there.</p> <p>2 Q. But it was a happy day?</p> <p>3 A. Selling the business?</p> <p>4 Q. Receiving that check for \$930,000.</p> <p>5 A. Actually, it was a very scary day.</p> <p>6 Q. Because?</p> <p>7 A. Because I had built a business with Bob that was like a child and we were embarking on growing the company and I, you know, had -- felt remorse, right? We sold the business. The child was growing up.</p> <p>8 Q. It's like sending it out into the world?</p> <p>9 A. Right, going to college. I cried the day my children went to college. Same thing.</p> <p>10 Q. Right. It's no longer your baby?</p> <p>11 A. Yeah, it's an evolution to an adulthood.</p> <p>12 Yes.</p> <p>13 Q. Now, you read the complaint before it was</p> <p>14 filed, right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And you familiarized yourself with it</p> <p>17 before it was filed?</p> <p>18 A. Yes.</p> <p>19 Q. And you understood that it was a serious</p>	Page 98	<p>1 Q. And this breach you allege was committed by</p> <p>2 the NAM executives who ran CCMI after the</p> <p>3 acquisition?</p> <p>4 A. Yes.</p> <p>5 Q. And their decisions, you claim, led to the</p> <p>6 breach of the covenant of good faith and fair</p> <p>7 dealing, right?</p> <p>8 A. Yes.</p> <p>9 Q. That's what you claim, am I right?</p> <p>10 A. Yes.</p> <p>11 Q. And those NAM executives who would have</p> <p>12 made these decision were all located in either New</p> <p>13 York or Wilton, Connecticut, right?</p> <p>14 A. That is correct.</p> <p>15 Q. That's where their offices are located,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. None of them are located in Boston or</p> <p>19 elsewhere in Massachusetts, right?</p> <p>20 A. No.</p> <p>21 Q. Now, your second count is under</p> <p>22 Massachusetts General Law 93A, right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you still make that claim as you sit</p>	Page 100
<p>1 step to file a lawsuit, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Not something to be done casually, right?</p> <p>4 A. Filing a lawsuit is a serious matter.</p> <p>5 Q. Right. And you are aware, are you not,</p> <p>6 that all of NAM's costs and attorneys' fees could</p> <p>7 be assessed against you if the Court were to find</p> <p>8 under Rule 11 of the Federal Rules of Civil</p> <p>9 Procedure that your claims were not warranted under</p> <p>10 the provisions of the rule?</p> <p>11 A. No, I was not aware of that.</p> <p>12 Q. And are you aware that NAM's legal costs</p> <p>13 could be well over a million dollars before this</p> <p>14 case is over?</p> <p>15 A. I have no idea about that. You must be an expensive lawyer.</p> <p>16 Q. In your complaint, you have three counts,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. The first count is breach of the covenant</p> <p>20 of good faith and fair dealing which you claim is</p> <p>21 implicit in the 1999 Stock Purchase Agreement,</p> <p>22 right?</p> <p>23 A. Yes.</p>	Page 99	<p>1 here today?</p> <p>2 A. Yes.</p> <p>3 Q. Now, your third count is for declaratory</p> <p>4 judgement, right?</p> <p>5 A. Yes.</p> <p>6 Q. And here you claim that other News America</p> <p>7 business units, including the I-Group, are</p> <p>8 successors to CCMI and that the revenues generated</p> <p>9 by them must be included in the calculation of</p> <p>10 gross margin that determines the amounts due to you</p> <p>11 and Mr. Fireman under the agreement?</p> <p>12 A. Yes.</p> <p>13 Q. Is that what you contend?</p> <p>14 A. Mm-hmm.</p> <p>15 Q. Do you still make that claim?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Is there revenue from other NAM</p> <p>18 business units which should have been included in</p> <p>19 any of the five earn-out calculations?</p> <p>20 A. I was asked to support sales for the dot com group and the base organization, and therefore, my work, which took me away from earning money in my own company to generate sales in other aspects of the news organization should therefore be</p>	Page 101

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<p>1 counted.</p> <p>2 Q. And so what you base this claim on is the 3 fact that you did some work for SmartSource dot 4 com?</p> <p>5 A. Yes.</p> <p>6 Q. Anything else?</p> <p>7 A. And then the -- the NAM organization, the 8 base NAM organization.</p> <p>9 Q. So you did some other work for NAM?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. And what was that other work?</p> <p>12 A. Introducing them to clients to sell the 13 base products.</p> <p>14 Q. I see. So you did some introductions?</p> <p>15 A. Which closed business.</p> <p>16 Q. And who did you make introductions to?</p> <p>17 A. I made introductions to retailers.</p> <p>18 Q. Can you identify them for me, please?</p> <p>19 A. I don't recall at the moment, and I am sure 20 it's listed in my activity reports.</p> <p>21 Q. But I'm asking you if you can remember them 22 now.</p> <p>23 A. I don't recall all the details, but I'm 24 sure it's in all the documents we have.</p>	<p>Page 102</p> <p>1 Q. So both?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you name -- again, I'm going to 4 ask you this again. Can you name one retailer for 5 which work was actually obtained as a result of 6 your introduction?</p> <p>7 A. I -- I cannot remember at the moment, but 8 there is documentation and it will tell you and NAM 9 has that information.</p> <p>10 Q. Can you tell me what year that took place?</p> <p>11 A. I believe it took place beginning in 2000 12 -- 2000/2001 to 2003.</p> <p>13 Q. And with respect to manufacturers, can you 14 remember any manufacturers that you were 15 responsible for providing the introduction that 16 ultimately led to getting the work?</p> <p>17 A. Coca-Cola.</p> <p>18 Q. And when did this take place?</p> <p>19 A. I don't recall the exact year, but it 20 happened --</p> <p>21 Q. Was it toward the beginning or toward the 22 end of your tenure with NAM?</p> <p>23 A. I would say it was in the middle.</p> <p>24 Q. And did you raise -- well, first of all,</p>
<p>Page 103</p> <p>1 Q. Can you identify one retailer to which you 2 introduced other NAM personnel from which revenue 3 was generated as a result of your meeting?</p> <p>4 A. Yes, I can't -- I know that that occurred 5 and I do not recall the names of the retailers, but 6 I know that there are written documentations that 7 explain the incremental sales that I made for 8 SmartSource dot com.</p> <p>9 Q. Do you have those documents?</p> <p>10 A. You must have those documents in all of the 11 materials that were handed to you, and I'm certain 12 that NAM has those documents and that SmartSource 13 dot com has those documents.</p> <p>14 Q. But you can't as you sit here identify the 15 retailers who you think you should get credit for?</p> <p>16 Isn't that a fact?</p> <p>17 A. At the moment, I don't recall the details 18 of those transactions. I know that they did occur, 19 I know that there was reports that were written 20 that state who the retailers were and the 21 manufacturers.</p> <p>22 Q. Okay. And so is it introducing to 23 retailers and manufacturers?</p> <p>24 A. Yes.</p>	<p>Page 105</p> <p>1 let me ask you, any other retail manufacturers 2 besides Coca-Cola?</p> <p>3 A. I'm sure there were several, but I don't 4 recall the details and I know that it's probably 5 sitting in the documents.</p> <p>6 Q. But as you sit here today, Coca-Cola is the 7 only one that you can remember?</p> <p>8 A. At the moment, today, Coca-Cola is the one 9 that I remember specifically, but there are other 10 companies and I know that it was reported.</p> <p>11 Q. Mm-hmm. And you think that whatever work 12 you did in this -- in this regard was over and 13 above your employment agreement and should be 14 credited toward your earn-out?</p> <p>15 A. Yes, that is correct. My job was to drive 16 the profitability of my group and the sales of my 17 group so that we could mutually take this business 18 to \$50 million. I was distracted by being required 19 to go and sell other products and services of NAM 20 to customers I had relationships with.</p> <p>21 Q. Okay. Did you ever raise this issue in any 22 of your earn-out discussions with officials at NAM?</p> <p>23 A. We raised many issues about our earn-out.</p> <p>24 Q. No, I understand that, but did you ever</p>

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1 raise this issue, that your introductions for other
 2 NAM business to retailers or manufacturers should
 3 be given consideration in the earn-out calculation?
 4 Did you ever raise that issue during your earn-out
 5 discussions in any of the five earn-out years?
 6 **A. I do not recall specifically.**
 7 Q. You didn't do so, did you?
 8 **A. You asked me a question. I answered it. I**
9 do not recall specifically. I raised the issue
10 about my spending the time working on business that
11 had nothing to do with my business and the issues
12 related to that. I do not recall specifically.
 13 Q. Well, let's take a look at your employment
 14 agreement dated August 13th, 1999. And your duties
 15 to New America Marketing In-Store, Inc. is defined
 16 in paragraph two of that agreement, is it not?
 17 **A. Paragraph two? Which paragraph two? Which**
18 paragraph exactly are you asking me to read,
19 please?
 20 Q. I want you to take a look at paragraph two.
 21 **A. Number two?**
 22 Q. Paragraph number two.
 23 **A. Okay, that's not paragraph two. I just**
 24 **want to make sure where you're going.**

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1 executive officer as shall be determined by the
 2 company's board of directors. And that is the
 3 entirety of paragraph two and paragraph 3A, is it
 4 not?
 5 **A. That is the entirety.**
 6 Q. Thank you. I take it you cannot tell us,
 7 because you can't remember, what year these various
 8 additional sums should be added to your earn-out
 9 calculation; that is, the additional sums caused by
 10 your making introductions to retailers or
 11 manufacturers for the purpose of getting business
 12 from other NAM divisions?
 13 **A. That is correct.**
 14 Q. Okay. You'll agree with me that there's no
 15 count in your complaint for fraudulent inducement
 16 against New America Marketing with respect to the
 17 agreement, right?
 18 MR. RICH: Objection.
 19 **A. The three counts do not state fraud.**
 20 Q. (BY MR. KATZ) Right. Nor is there any
 21 other count in your complaint for fraud against New
 22 America Marketing with respect to the agreement,
 23 right?
 24 MR. RICH: Objection.

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1 Q. Paragraph numbered two. Not the second
 2 paragraph in the letter --
 3 **A. Okay.**
 4 Q. -- but paragraph number two of your August
 5 13th, 1999 employment agreement.
 6 **A. Mm-hmm.**
 7 Q. This paragraph two defines your job at News
 8 America Marketing In-Store, Inc., does it not?
 9 **A. All it says is that I'll perform consistent**
10 with my position set forth in paragraph 3E -- 3A.
 11 Q. No, it says this. Let me read it you. It
 12 says you shall perform such duties consistent with
 13 your position set forth in paragraph 3A hereof, as
 14 are assigned to you from time to time, and agree to
 15 take trips both within and outside the United
 16 States as may be reasonably requested by the
 17 company in connection with the performance of your
 18 duties hereunder. And then, in paragraph 3A it
 19 says you shall serve as a senior vice president of
 20 sales and marketing and you shall be assigned to
 21 work in the company's offices in the Boston
 22 vicinity. You shall report directly to the
 23 executive vice president and chief financial
 24 officer of the company or such other senior

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1 **A. The three counts do not include fraud.**
 2 Q. (BY MR. KATZ) Where were you born?
 3 **A. Detroit, Michigan.**
 4 Q. When?
 5 **A. 1947.**
 6 Q. What's your educational background?
 7 **A. I have an MBA.**
 8 Q. From?
 9 **A. Michigan State.**
 10 Q. Have you ever been involved in a lawsuit
 11 other than this one?
 12 **A. No.**
 13 Q. This is the first time?
 14 **A. Yes.**
 15 Q. Okay. Is this the first time you've been a
 16 party to a lawsuit?
 17 **A. Yes.**
 18 Q. Okay. Did CCMCI ever bring suit?
 19 **A. I don't know.**
 20 Q. Did CCMCI ever sue Lucky Stores?
 21 **A. I don't think so. I don't know. I do not**
22 recall. At this time, I do not recall.
 23 Q. Do you have any recollection of CCMCI suing
 24 any retail customer?

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<p style="text-align: right;">Page 110</p> <p>1 A. I do not recall. 2 Q. And I think you told us that you've never 3 sued or been sued other than your participation in 4 this case? 5 A. That is correct. 6 Q. Okay. When did you first enter the work 7 force? 8 A. When I was -- when I was 16. 9 Q. Okay. Well, we'll jump to your MBA. After 10 you received your MBA, what did you do? 11 A. I worked for Stop & Shop supermarkets. 12 Q. Beginning in what year? 13 A. 1970. 14 Q. How long did you work at Stop & Shop? 15 A. A few years. 16 Q. And when did you cease working at Stop & 17 Shop? 18 A. 1972. 19 Q. And what did you do then? 20 A. I worked for Dennison Manufacturing. 21 Q. What was your job at Stop & Shop? 22 A. I went through -- I was a store trainee, I 23 worked on marketing programs, I was a buyer and a 24 merchandiser.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I was a product manager. 2 Q. And following Dennison, what did you do? 3 A. I worked for the Gillette Company. 4 Q. What year did that start? 5 A. '74 -- yeah, '74. 6 Q. How long did you work at Gillette? 7 A. A couple of years. 8 Q. And what was your job at Gillette? 9 A. I was a product manager. 10 Q. What product? 11 A. Hyponex. 12 Q. What was that? 13 A. Plant care. 14 Q. Ah, yes. And for how long? 15 A. A couple of years. 16 Q. And following that, what did you do? 17 A. I worked for Colombo Yogurt. 18 Q. And how many years did you work at Colombo? 19 A. A couple years. 20 Q. And what was your job there? 21 A. Key account sales. 22 Q. And who did you sell to? 23 A. Major supermarket chains. 24 Q. Again, this was for, what, a couple of</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Did you work at headquarters or did you 2 work in a store? 3 A. Both. 4 Q. Started out in a store and then went to 5 headquarters? 6 A. Yes. 7 Q. And where was Stop & Shop located then? 8 A. 393 D Street, South Boston. 9 Q. Before the move to Quincy? 10 A. That is correct. 11 Q. And so you worked at Stop & Shop for a few 12 years, until approximately 1972? 13 A. Mm-hmm. 14 Q. Is that right? Then you went to work for 15 Dennison Manufacturing? 16 A. That is correct. 17 Q. What does Dennison make? I don't know if 18 they still make anything now. 19 A. They make stationery products. 20 Q. And what were your years there? 21 A. One year. 22 Q. Which year was that? 23 A. '72 to '73. 24 Q. And what was your job there?</p>	<p style="text-align: right;">Page 113</p> <p>1 years? 2 A. Yes. 3 Q. When did that cease? 4 A. '78, something like that. 5 Q. And following Colombo, your Colombo job, 6 what did you do? 7 A. I worked for Hood. H.P. Hood. 8 Q. And again, what year did that start? 9 A. I don't remember the exact year, but 10 probably 1978, something like that. 11 Q. How long did you work for H.P. Hood? 12 A. Six years. 13 Q. And what did you do? 14 A. I was a product manager and ran the brands. 15 Q. Which brands? 16 A. Ice cream, cultured products and cheese. 17 Q. And what did that entail? 18 A. Running the P&L's, launching new products, 19 creating promotions. 20 Q. Good job? 21 A. Good job. 22 Q. Why did you leave? 23 A. I had an opportunity to work in a new 24 venture.</p>

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1 Q. And what was the new venture?
 2 **A. The Coupon Counter.**
 3 Q. And what is the coupon counter?
 4 **A. It was a company that dispensed coupons at**
the point of sale for manufacturers and
supermarkets.
 7 Q. Where was it based?
 8 **A. Westwood, Massachusetts.**
 9 Q. And what was your job?
 10 **A. Head of marketing.**
 11 Q. Is the company still around?
 12 **A. No.**
 13 Q. How long did it last?
 14 **A. A few years.**
 15 Q. And your job there began in what year?
 16 **A. 1980-- '84, '85, something like that.**
 17 Q. And you left H.P. Hood in order to take
 18 this job?
 19 **A. Yes, I did.**
 20 Q. And the company stayed in business for,
 21 what, three years? Is that what you're saying?
 22 **A. A couple years.**
 23 Q. And it just didn't survive? Is that what
 24 happened?

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1 Q. This takes us up to what year?
 2 **A. 1990.**
 3 Q. And what did you do then?
 4 **A. I met Bob Fireman and we created a**
corporation.
 6 Q. How did you meet Mr. Fireman?
 7 **A. I was introduced to him by Carol Goldberg.**
 8 Q. From Stop & Shop?
 9 **A. That is correct.**
 10 Q. And you had -- well, let me ask this
 11 question. How many years prior to the founding of
 12 CCMCI had you met Mr. Fireman?
 13 **A. None.**
 14 Q. So tell me the circumstances of your
 15 meeting.
 16 **A. I had met with Carol Goldberg and told her**
that I had been in banking for several years and
that I saw the opportunity to drive technology at
the point of sale for supermarkets and that I
wanted to go back into the supermarket and food
business because I believed there was a great
opportunity there. She said that she had seen a
business plan presented by Mr. Fireman that she
thought had a lot of merit and that she would ask

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1 **A. The private equity group decided not to**
fund an expansion of the business nationwide.
 3 Q. And so the company ultimately folded?
 4 **A. Yes.**
 5 Q. And what did you do?
 6 **A. I went to work for Shawmut Bank.**
 7 Q. What did you do at Shawmut Bank?
 8 **A. I did strategic planning and I did the**
marketing for self-service banking.
 10 Q. What do you mean by self-service banking?
 11 **A. ATM's, voice automation, touch screen**
automation.
 13 Q. And you were involved in marketing that
 14 product?
 15 **A. Yes, I was.**
 16 Q. And this was during what time period?
 17 **A. The mid '80's to the late '80's, until**
 18 **1990.**
 19 Q. And you left that job at some point?
 20 **A. Yes.**
 21 Q. And why did you leave that job?
 22 **A. They merged with Connecticut National Bank**
 23 **and my job got moved to Connecticut and I didn't**
 24 **move.**

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1 **him if she could confidentially share the plan with**
me and if we thought that there was an opportunity
to work together.
 4 Q. And then what happened next?
 5 **A. We had the opportunity to meet. We looked**
 6 **at his business plan and actually decided there was**
 7 **an approach to the business that we felt had a lot**
 8 **of merit and we created a pilot program to test the**
 9 **validity.**
 10 Q. And what did the pilot program consist of?
 11 **A. It consisted of building loyalty cards,**
 12 **creating databases of shoppers, and executing**
 13 **marketing programs.**
 14 Q. And this was in what year?
 15 **A. '90, '91.**
 16 Q. And is that when the company was founded?
 17 **A. 1991.**
 18 Q. Okay. And who was your first customer?
 19 **A. Shaw's.**
 20 Q. And what did you do for them?
 21 **A. We launched the -- we launched their entire**
 22 **loyalty marketing program.**
 23 Q. How many cards?
 24 **A. Millions.**

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<p style="text-align: right;">Page 118</p> <p>1 Q. Very profitable?</p> <p>2 A. Yes.</p> <p>3 Q. And what did you do with the profits from</p> <p>4 that project?</p> <p>5 A. Invested it in expanding the business.</p> <p>6 Q. In what ways?</p> <p>7 A. We used the money to travel to do business</p> <p>8 development work.</p> <p>9 Q. How did you and Mr. Fireman divide your</p> <p>10 roles at CCMi prior to the acquisition by NAM?</p> <p>11 A. I was in charge of sales and marketing and</p> <p>12 was the outward face of the company to the</p> <p>13 marketplace, so I spoke, I sat on boards, I visited</p> <p>14 with customers. Mr. Fireman ran the legal</p> <p>15 operations and finance part of the business.</p> <p>16 Q. Did you always work full-time for CCMi once</p> <p>17 it was founded?</p> <p>18 A. At the -- when CCMi was first founded, I</p> <p>19 worked on a consulting project for Staples for a</p> <p>20 period of a few months.</p> <p>21 Q. Apart from the Staples project, did you</p> <p>22 always work full-time for CCMi prior to the</p> <p>23 acquisition?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 120</p> <p>1 did not -- he was not a practicing attorney.</p> <p>2 Q. Did Mr. Fireman participate in any business</p> <p>3 ventures while he was under contract to NAM?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. Did you participate in any business</p> <p>6 ventures while you were under contract to NAM?</p> <p>7 A. No.</p> <p>8 Q. Fair statement that neither you nor</p> <p>9 Mr. Fireman are computer technology experts?</p> <p>10 MR. RICH: Objection.</p> <p>11 A. I'm not sure what the definition of a</p> <p>12 computer technology expert is.</p> <p>13 Q. (BY MR. KATZ) Well, using your definition</p> <p>14 of it, do you consider yourself to be a computer</p> <p>15 technology expert?</p> <p>16 A. I believe I understand databases and I</p> <p>17 understand database marketing, and in the context</p> <p>18 of what computers are used to do that work, I</p> <p>19 believe I am well-versed. If you're asking me to</p> <p>20 write code, I cannot write code.</p> <p>21 Q. Okay. Are you an expert on the marketing</p> <p>22 analysis software?</p> <p>23 A. Yes.</p> <p>24 Q. Are you an expert on the Epiphany system?</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. Did Mr. Fireman always work full-time for</p> <p>2 CCMi prior to the acquisition?</p> <p>3 A. His full-time job was working for CCMi.</p> <p>4 Q. Was he involved in other ventures at the</p> <p>5 same time he was working for CCMi?</p> <p>6 A. Yes.</p> <p>7 Q. What kind of ventures were these?</p> <p>8 A. He worked in a video game venture.</p> <p>9 Q. What was the name?</p> <p>10 A. You know, I don't recall.</p> <p>11 Q. Any other ventures besides the video game</p> <p>12 venture?</p> <p>13 A. No.</p> <p>14 Q. Did he continue to practice -- or did he</p> <p>15 continue to have a private practice of law?</p> <p>16 A. No.</p> <p>17 Q. No clients during --</p> <p>18 A. Only friends and family or favors to</p> <p>19 friend, but he did not practice law.</p> <p>20 Q. Did he continue to practice law after the</p> <p>21 acquisition by NAM of CCMi?</p> <p>22 A. No. You know, friends and family. You</p> <p>23 know, if a friend of the family's or, you know,</p> <p>24 something asked Bob to ask a legal opinion, but he</p>	<p style="text-align: right;">Page 121</p> <p>1 A. I am knowledgeable about the Epiphany</p> <p>2 system.</p> <p>3 Q. Okay. Are you an expert on Catalina's RDOL</p> <p>4 product?</p> <p>5 A. I'm not sure what the acronym RDOL product</p> <p>6 is.</p> <p>7 Q. So do you know what the product --</p> <p>8 A. Catalina has multiple products.</p> <p>9 Q. Are you familiar with their products?</p> <p>10 A. If you're talking about their database</p> <p>11 product, if that's what RDOL is, I am familiar that</p> <p>12 they have a database product, and if you're talking</p> <p>13 about the Catalina product that they use to</p> <p>14 dispense coupons at the point of sale, I am</p> <p>15 familiar with that product.</p> <p>16 Q. Are you an expert on the Market Expert tool</p> <p>17 which Valassis uses?</p> <p>18 MR. RICH: Objection.</p> <p>19 A. I don't know what your definition of expert</p> <p>20 is. I am aware that Valassis uses the Market</p> <p>21 Expert tool and I am aware of the general</p> <p>22 functionality of the Market Expert tool.</p> <p>23 Q. (BY MR. KATZ) In general, you rely on</p> <p>24 others when it comes to knowledge regarding</p>

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1 computers and software products, right?

2 MR. RICH: Objection.

3 **A. Not necessarily. As the user, I rely on**
 4 **myself to define the requirements of what the**
 5 **technology should do. I rely on the technologist**
 6 **to build what the user needs.**

7 Q. (BY MR. KATZ) Neither you nor Mr. Fireman
 8 had any educational training with respect to
 9 computer technology or website design, right?

10 **A. We have taken seminars. We have attended**
 11 **seminars. Do we have an actual degree in those**
 12 **practices? I do not.**

13 Q. What seminars have you taken that relate to
 14 --

15 **A. Epiphany.**

16 Q. -- computers?

17 **A. For example, Epiphany ran seminars. There**
 18 **were several companies -- IBM ran seminars on their**
 19 **tool sets and how things work. NCR, IBM, there**
 20 **were several companies where they -- they educated**
 21 **users and business decision-makers about the**
 22 **features and functionality of what technology could**
 23 **do and how it works, and I read a lot about that,**
 24 **and the Direct Marketing Association, so those were**

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2 **A. David DeVoe had just come to work as the**
 3 **CFO for NAM and he was putting together a group of**
 4 **companies who would be defined as a new ventures**
 5 **group of new technologies and new practices that**
 6 **NAM did not have experience in, and he was buying**
 7 **-- he was making -- had a strong interest in, and**
 8 **based on the discussions with Lachlan Murdoch, that**
 9 **they felt the market was moving away from**
 10 **conventional marketing tools into database and**
 11 **Internet tools and that they were looking for**
 12 **technology companies, marketing -- database**
 13 **marketing companies and Internet companies that**
 14 **were forward-thinking in where they saw the market**
 15 **moving, and that David DeVoe was buying companies**
 16 **and was very interested in buying companies. That**
 17 **was the context in which the conversation began.**

18 Q. Okay. And had CCMi been discussing with
 19 any other parties the possibility of selling the
 20 company to them?

21 **A. Yes.**

22 Q. Who?

23 **A. We talked to The Food Fund.**

24 Q. And who did you speak to at The Food Fund?

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1 **some of the places where we gained a working**
 2 **knowledge of that.**

3 Q. Is it a fair statement that the business of
 4 CCMi prior to the acquisition by NAM never involved
 5 access to a website by consumers or retail stores,
 6 right?

7 **A. I believe we did not -- our tool set did**
 8 **not have the ability to port information to a**
 9 **website. I believe that's accurate.**

10 Q. When did you first express an interest to
 11 someone at NAM in being acquired?

12 **A. NAM actually expressed an interest to us.**

13 Q. And when did that occur?

14 **A. 1999.**

15 Q. And how did it occur?

16 **A. I do not remember the exact process, but**
 17 **the discussion began with Henri Lellouche.**

18 Q. He was the first person who talked to you,
 19 talked to -- when I say you, I mean you or
 20 Mr. Fireman.

21 **A. It was either Henri Lellouche -- I can't**
 22 **answer if he was the first person. It was Henri**
 23 **Lellouche or David -- or Jon Rubin.**

24 Q. What do you mean the discussion consisting

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1 **A. John -- I don't remember his last name.**

2 Q. Where is The Food Fund based?

3 **A. Minneapolis.**

4 Q. And you never received a written offer from
 5 The Food Fund to purchase your company, did you?

6 **A. I know that they made -- whether -- I**
 7 **cannot testify that it was actually written. They**
 8 **made an offer. Whether it was written or not, I**
 9 **don't remember.**

10 Q. And how much was the offer?

11 **A. It was to buy a percentage of the stock of**
 12 **the company, not the whole company, and I don't**
 13 **remember the financial details.**

14 Q. How much stock and how much -- what were --

15 **A. I don't remember the details.**

16 Q. Were they going to pay you in stock or were
 17 they going to pay you in cash?

18 **A. No, they were going to pay us in cash for a**
 19 **percentage of the stock.**

20 Q. A minority position or a majority position?

21 **A. A minority position.**

22 Q. And you have no idea as to how much they
 23 were going to pay for the minority position?

24 **A. No, I actually don't.**

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<p>1 Q. Apart from Food Fund, anybody else 2 interested in participating in CCMI?</p> <p>3 A. Yes, Donnelly showed an interest.</p> <p>4 Q. Do you mean R.R. Donnelly?</p> <p>5 A. No, the other Donnelly. R.R. Donnelly is 6 the printer. It's Donnelly -- I don't know what 7 it's actually called, actually. It's the other 8 Donnelly. It's not R.R. Donnelly.</p> <p>9 Q. Mm-hmm.</p> <p>10 A. Valassis.</p> <p>11 Q. So what did -- tell me -- let's start with 12 -- let's go back to Donnelly. What were your 13 discussions with Donnelly?</p> <p>14 A. They wanted a database -- they were 15 considering a database marketing company. They 16 were considering entering into a database marketing 17 company space that could build loyalty programs for 18 retailers. They did not have that.</p> <p>19 Q. Did they ever make you a firm written offer 20 to purchase any part of the company?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Anybody else besides Donnelly and Food Fund 23 express an interest in considering acquiring all or 24 part of CCMI?</p>	<p>Page 126</p> <p>1 A. I don't recall if it was written. There 2 were meetings and discussions. Whether it was 3 written, I don't recall.</p> <p>4 Q. You just don't remember any -- anything 5 about any proposed transaction with them, right?</p> <p>6 A. Oh, I remember there were serious 7 discussions with them and we met with many people 8 from their organization, but I don't recall if it 9 was written.</p> <p>10 Q. What -- what was Valassis interested in 11 acquiring, if anything?</p> <p>12 A. The database company -- the database 13 expertise we had and the retailer relationships.</p> <p>14 Q. Did they want to buy the whole company as 15 opposed to just a part of it?</p> <p>16 A. I don't recall.</p> <p>17 Q. Were they going to give you stock or cash?</p> <p>18 A. No. They were going to give us cash.</p> <p>19 Q. Do you remember how much cash?</p> <p>20 A. No.</p> <p>21 Q. And you don't remember what percentage of 22 the company they were interested in?</p> <p>23 A. No, I don't recall the context of that 24 deal.</p>
<p>1 A. There were several companies at the time.</p> <p>2 Q. Well, that's what I want you to do is 3 identify them.</p> <p>4 A. Well, I'm not sure I remember all of them.</p> <p>5 Q. Well, besides Donnelly, besides Food Fund, 6 who do you remember?</p> <p>7 A. Valassis.</p> <p>8 Q. And who did you talk with at Valassis?</p> <p>9 A. The CFO.</p> <p>10 Q. What was his name?</p> <p>11 A. Rechia.</p> <p>12 Q. I'm sorry?</p> <p>13 A. Rechia.</p> <p>14 Q. How do you spell that?</p> <p>15 A. I don't know. I don't know.</p> <p>16 Q. Phonetically?</p> <p>17 A. Rechia, R-E --</p> <p>18 Q. C-H-I-A?</p> <p>19 A. Something like that, I guess.</p> <p>20 Q. When did this discussion take place?</p> <p>21 A. Prior to talking to NAM.</p> <p>22 Q. Okay. And that discussion did not result 23 in a firm written offer to buy all or part of CCMI, 24 right?</p>	<p>Page 127</p> <p>1 Q. So we have Valassis, we have Donnelly, we 2 have Food Forum --</p> <p>3 A. Food Fund.</p> <p>4 Q. Food Fund. I'm sorry. Do we have anybody 5 else that you remember who were interested in the 6 company?</p> <p>7 A. There were other companies who came forth, 8 but I really don't recall.</p> <p>9 Q. And it's a fair statement that you never 10 received a firm written offer from anyone apart 11 from New America Marketing to buy the company?</p> <p>12 A. I do not -- I do not know that to be a 13 fact.</p> <p>14 Q. But you certainly regarded New America 15 Marketing's offer as being the best offer you had 16 available, right?</p> <p>17 A. I considered New America Marketing's offer 18 to be a good offer because of their commitment to 19 let us use their sales force to grow our company to 20 \$50 million.</p> <p>21 Q. And because you were going to get a million 22 bucks when it closed, correct? Not a bad deal, 23 right?</p> <p>24 MR. RICH: Objection.</p>

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1 **A. A million dollars at the closing was a**
 2 **terrible deal. The deal to be made at CCMi was not**
 3 **a million dollars; it was the opportunity to make**
 4 **\$50 million. It was the opportunity for a company**
 5 **that had a national reputation of being experts in**
 6 **their field with impeccable credentials to grow the**
 7 **business when we had a leadership share before**
 8 **other corporations entered into the marketplace.**
 9 **We were at the point of great growth. New America**
 10 **Marketing came to us with a sales force in place to**
 11 **work with manufacturers to use retailer data, and**
 12 **the commitment to help us accelerate the growth of**
 13 **\$50 million so we did not have to build that sales**
 14 **force ourselves.**

15 **So \$1 million was not a good deal. The**
 16 **deal to be made with CCMi was the opportunity to be**
 17 **a \$50 million business and make multiple million**
 18 **dollars. It was certainly not for the million**
 19 **dollars.**

20 Q. (BY MR. KATZ) So what was critical for
 21 you, if I hear you correctly, is to have the
 22 commitment of New America Marketing to use its
 23 existing sales force to sell the products which you
 24 developed at CCMi; is that right?

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1 **the conduct of the business that the buyer**
 2 **committed to us and the interpretation by -- by us**
 3 **of them and their good faith discussions with us is**
 4 **that they would live up to that obligation.**

5 Q. Now, at the time you agreed to that
 6 language, you were being advised by multiple
 7 attorneys at Goodwin Procter & Hoar, right?

8 A. At the time that we agreed to that
 9 language, Goodwin Procter -- I don't know how many
 10 lawyers. You say multiple lawyers. There were --
 11 we were advised by certainly one lawyer as to the
 12 contract.

13 Q. And so you certainly had the ability to ask
 14 him what that language meant from a legal
 15 standpoint; isn't that right?

16 A. Our attorneys at Goodwin Procter spoke to
 17 the people at News America and News America's
 18 lawyers and they understood, as we understood, on
 19 what that definition meant.

20 Q. And did the lawyers at Goodwin Procter
 21 explain to you what that language meant from their
 22 standpoint?

23 MR. RICH: Well, wait a minute. I'm
 24 going to object and instruct the witness not to

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1 **A. That was one of several critical components**
 2 **and the good faith that they put forth that they**
 3 **would deliver against that commitment.**

4 Q. Okay, but you'll agree with me that there
 5 is nothing in the 1999 Stock Purchase Agreement
 6 which requires News America Marketing to deploy its
 7 sales force to any degree to sell CCMi products,
 8 right?

9 MR. RICH: Objection.

10 A. I do not agree.

11 Q. (BY MR. KATZ) Then please point me to the
 12 language.

13 A. I will point you to the language that says
 14 under the good faith that they --

15 Q. No, no. You don't need to editorialize.

16 Just point me to the language.

17 A. It is the buyer's current intention,
 18 intention, to provide the support to the business
 19 of the company using the buyer's sales force to
 20 promote the sale of the company products --

21 Q. Okay.

22 A. -- assisting in the creation of long-term
 23 relationships with retailers and investing in
 24 software as needed to expand the business. That is

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1 answer to the extent you're asking for private
 2 communications between Ms. Raider and her lawyer.
 3 (Comments off the record.)

4 MR. RICH: But to the extent the
 5 question he just asked --

6 Q. (BY MR. KATZ) That's a question that --
 7 your counsel is absolutely right; that is, if that
 8 calls for -- you have a privilege, but you can
 9 waive it if you choose to.

10 A. No, I'm not going to waive any privilege.

11 Q. Okay.

12 A. The contract was presented, reviewed by our
 13 lawyers, discussed with the News America lawyers,
 14 and the intention was that they would provide
 15 services as outlined in that paragraph.

16 Q. Okay. Why don't we take a break right
 17 here.

18 (Off the record.)

19 (Lunch recess taken.)

20 Q. (BY MR. KATZ) Ms. Raider, we're back on
 21 the record and you're still under oath. Let me
 22 just ask a question about Goodwin Procter. Do you
 23 believe you got good representation from Goodwin
 24 Procter in connection with the Stock Purchase

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<p>1 Agreement?</p> <p>2 A. I believe Goodwin Procter is a good law</p> <p>3 firm.</p> <p>4 Q. But did they give you good representation</p> <p>5 in terms of what they did for you in connection</p> <p>6 with the August 13th, 1999 Stock Purchase</p> <p>7 Agreement?</p> <p>8 A. I believe so.</p> <p>9 Q. You were content?</p> <p>10 A. Yeah.</p> <p>11 Q. That's a yes?</p> <p>12 A. Yes. I'm sorry.</p> <p>13 Q. Going back to the period prior to the</p> <p>14 acquisition of CCMI by NAM, you categorized your</p> <p>15 business into three groups, right?</p> <p>16 A. Four.</p> <p>17 Q. Okay. Well, that -- let's go back to</p> <p>18 Mr. Coughlin's memo, if we could. If you could</p> <p>19 take a look at the second page of Mr. Coughlin's</p> <p>20 memo, which is Exhibit 16 --</p> <p>21 A. Mm-hmm.</p> <p>22 Q. -- under revenue, we have three categories;</p> <p>23 do you see? One is implementation --</p> <p>24 A. Oh, I see. He combined consulting and</p>	<p>1 it's the fourth page of Mr. Coughlin's July 6th,</p> <p>2 1999 memo, which is Exhibit 16, FR 2677. Do you</p> <p>3 see that?</p> <p>4 A. Yes.</p> <p>5 Q. And your revenue from the loyalty cards had</p> <p>6 been about 1.8 million in 1996, right?</p> <p>7 A. As it is reported here.</p> <p>8 Q. And you don't have any reason to doubt the</p> <p>9 accuracy of what's reported here, do you?</p> <p>10 A. I do not.</p> <p>11 Q. And then you had a big spike in 1997 with</p> <p>12 \$6.6 million in implementation revenue; is that</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. And why was that spike?</p> <p>16 A. I do not recall the detail components of</p> <p>17 that spike, but we did sell a very large card</p> <p>18 program to Lucky Stores, and that may have been the</p> <p>19 year that that was actually booked.</p> <p>20 Q. Okay. So you think that the 6.6 has to do</p> <p>21 with a roll-out for Lucky Stores?</p> <p>22 A. It may have.</p> <p>23 Q. And how many cards were involved with the</p> <p>24 Lucky Stores roll out?</p>
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<p>1 marketing programs as one group, and I looked at</p> <p>2 them as separate groups, so if you wanted to say</p> <p>3 yes, were there three groups, yes. I mean, the way</p> <p>4 he looked at it was three; the way I looked at it</p> <p>5 was four.</p> <p>6 Q. And he was making the projections insofar</p> <p>7 as future business were concerned?</p> <p>8 A. Yes.</p> <p>9 Q. So we can agree, can we not, that when he</p> <p>10 viewed what your business had been and what your</p> <p>11 business was going to be going forward, he put the</p> <p>12 business into three categories?</p> <p>13 A. Yes, that's fine.</p> <p>14 Q. And those were implementation --</p> <p>15 A. Yes.</p> <p>16 Q. -- database management and consulting</p> <p>17 marketing services?</p> <p>18 A. Yes.</p> <p>19 Q. Or consulting marketing programs, right?</p> <p>20 A. Yes.</p> <p>21 Q. Now, implementation, that was the business</p> <p>22 focused around retail store loyalty cards, right?</p> <p>23 A. That is correct.</p> <p>24 Q. And let's, if we can, go back to I guess</p>	<p>1 A. Millions.</p> <p>2 Q. When you say millions, was it under ten</p> <p>3 million?</p> <p>4 A. Under ten.</p> <p>5 Q. Under five?</p> <p>6 A. I don't know. I don't know. It -- I don't</p> <p>7 know the answer. It was not ten, but it may have</p> <p>8 been five.</p> <p>9 Q. And then you had a big drop in 1998 to 2.4</p> <p>10 million, right?</p> <p>11 A. According to these numbers.</p> <p>12 Q. Okay. Now, in 1999, you had only 12 retail</p> <p>13 customers? That's a fact, too, is it not?</p> <p>14 A. I do not know that to be a fact.</p> <p>15 Q. Let's take a look at the Stock Purchase</p> <p>16 Agreement. And if we could go to Schedule 4.1?</p> <p>17 A. 4.10? 4.1 --</p> <p>18 Q. 4.11.</p> <p>19 A. Okay.</p> <p>20 Q. And on Schedule 4.11, it was the contracts</p> <p>21 and commitments?</p> <p>22 A. Yes.</p> <p>23 Q. Right?</p> <p>24 A. Mm-hmm.</p>

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1 Q. And with respect to retail clients, the
 2 number of retail clients listed here is 12; is that
 3 right?

4 **A. Yes.**

5 Q. Okay. Could you tell me the names of all
 6 the new retail customers that came on board after
 7 the acquisition of CCMI by NAM in 1999?

8 **A. No, I cannot tell you the names of all of
 9 them.**

10 Q. Do you remember how many there were in
 11 terms of number?

12 **A. No, I do not remember exactly.**

13 Q. At some point in time, the name of CCMI was
 14 changed to SmartSource Direct, right?

15 **A. That is correct.**

16 Q. And you didn't lose any customers as a
 17 result of the name change, right?

18 MR. RICH: Objection.

19 **A. I -- we lost national presence that we were
 20 in the business of loyalty cards.**

21 Q. (BY MR. KATZ) Okay, but I'm not asking
 22 that question. I'm just asking if you lost any
 23 customers as a result of the name change.

24 **A. If you're asking me if I had a current**

1 **time who they are.**

2 Q. Why wouldn't they want to do business with
 3 NAM?

4 **A. Because they had not had a good experience
 5 with NAM.**

6 Q. And so it was your idea to continue to use
 7 the name CCMI and keep from them the fact that you
 8 were associated with NAM?

9 **A. It was my intent to keep the name CCMI as
 10 it was agreed to in discussions with the company.
 11 There was never a commitment, discussion or
 12 anything other that would lead us to believe that
 13 they were going to change our name in any way. We
 14 had eight years in the industry. We had a brand
 15 name everybody recognized. We had a national
 16 reputation of being an expert in our field, and no
 17 one ever said to us at the time before the sale
 18 that there was any discussion about changing the
 19 name other than CCMI. Never.**

20 Q. Can you show me anything in the agreement
 21 which prevented News America Marketing from
 22 changing the name to SmartSource Direct or any
 23 other name that it thought appropriate?

24 **A. We're going to have to stop again. I'm**

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1 **customer and because I changed my name they stopped
 2 doing business with us, if that's the question
 3 you're asking -- is that the question you're
 4 asking?**

5 Q. I'll ask that question.

6 **A. The answer is if I had a customer who was
 7 doing business with CCMI at the time of the name
 8 change, I do not believe that I lost a customer --**

9 Q. As a result of the name change?

10 **A. -- as a result of that name change, right.**

11 Q. And you can't name one customer which
 12 refused to do business with you because CCMI's name
 13 was changed to SmartSource Direct, right?

14 **A. I do not recall the answer to that.**

15 Q. So you can't as you sit here today name one
 16 customer who refused to do business with you
 17 because CCMI's name was changed to SmartSource
 18 Direct, right?

19 **A. I do not know that to be true. There were
 20 retailers who did not want to do business with NAM
 21 and the name changed to SmartSource Direct and the
 22 correlation to NAM may have prevented them from
 23 doing business with us as a result of that
 24 relationship. I do not recall at this point in**

1 **going to have to read.**

2 Q. Can you find anything?

3 **A. David, can I ask you a question privately?**

4 Q. Not during the course of the question.

5 **A. Okay.**

6 MR. RICH: Well, if the question
 7 relates to something that might implicate the
 8 attorney/client privilege, then you can ask me, but
 9 otherwise, answer his question if you can.

10 **A. I have a legal question.**

11 MR. RICH: Okay.

12 **A. So how do I ask you --**

13 MR. RICH: Why don't we take a break,
 14 then.

15 MR. KATZ: Let the record reflect.
 16 (Off the record.)

17 **A. Okay. On Section 4.8 it talks about no
 18 material adverse change. A brand name is an asset
 19 of the company as written. In fact, there are
 20 calculations called brand asset valuator, which
 21 talks about the value of the brand, and in the
 22 agreement on 4.8 it says that there would be no
 23 effect on the assets of the business.**

24 Q. (BY MR. KATZ) 4.8 doesn't refer to that.

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<p>1 4.8 refers to the fact that CCMI is representing 2 that there's been no adverse -- that it is aware of 3 no material adverse effect with respect to its 4 business during the period of time between the 5 negotiation of the deal and the execution of the 6 agreement?</p> <p>7 A. That's correct, and the brand name is the 8 asset of the business. There will be no withdrawal 9 or removal or any other means of company assets.</p> <p>10 We did not withdraw our name.</p> <p>11 Q. What language are you referring to?</p> <p>12 A. In 4.8J where it says any dividend 13 distribution, withdrawal or removal or any other 14 means of company assets. That meant that the brand 15 name was an asset, the asset was in place, and 16 therefore, the asset should stay in place. The 17 company's brand name was an asset of the business.</p> <p>18 Q. Look at paragraph -- at the beginning of 19 paragraph four. Do you see on page eight --</p> <p>20 A. Mm-hmm.</p> <p>21 Q. -- at paragraph four under which paragraph 22 4.8 follows is entitled representations and 23 warranties of the principal sellers and the 24 sellers. Do you see that?</p>	<p>Page 142</p> <p>1 changing the name of -- of CCMI after the 2 acquisition, does it?</p> <p>3 A. No.</p> <p>4 Q. Is there anything else you can point to in 5 the agreement that required News America Marketing 6 to keep the name CCMI?</p> <p>7 A. The agreement was a structured legal 8 document that did not really reflect the total 9 business opportunity for the corporation. They 10 were taking the assets of CCMI to build upon them, 11 and the brand name was an asset of the company.</p> <p>12 Q. So even though the agreement itself says in 13 paragraph 8.1 that it is a complete integration of 14 all the promises that it made, what you're telling 15 me is that the agreement itself is not a complete 16 statement of all the promises that you believe were 17 made?</p> <p>18 MR. RICH: Objection.</p> <p>19 Q. (BY MR. KATZ) Is that your position?</p> <p>20 A. My position is that this is a legal 21 document and that the spirit of this document was 22 to build the corporation together.</p> <p>23 Q. So is it your position that the spirit of 24 the document takes precedence over the precise</p>
<p>1 A. Mm-hmm.</p> <p>2 Q. Now seeing that title, do you now 3 understand that what is being referred to in 4 paragraph 4.8 is the representation that you are 5 making to News America Marketing that except as set 6 forth on Schedule 4.8, since the balance sheet 7 date, the company has conducted its business only 8 in the ordinary course of business consistent with 9 past practice and there has not been -- going to 10 paragraph J -- any dividend distribution or 11 withdrawal or removal by any other means of any of 12 the company's assets except for payments to 13 employees and payments made under notes payable and 14 accrued expenses in each case in the ordinary 15 course of business and forgiveness or cancellation 16 of the regular receivable and the payment or 17 accrual of the rate of the regular bonus, so what 18 that's referring to, is it not, is a representation 19 that you are making to News America Marketing that 20 you haven't taken anything away from the value of 21 the business?</p> <p>22 A. That is correct, and that also includes the 23 brand name, which is an asset.</p> <p>24 Q. But that doesn't have anything to do with</p>	<p>Page 143</p> <p>1 words of the document?</p> <p>2 MR. RICH: Objection.</p> <p>3 A. I am saying that the document outlined 4 requirements for -- while the document does not say 5 they cannot change the name, nor does it say they 6 can change the name. This says that they are 7 required to provide a sales force, they are 8 required to find cash. They are required to 9 provide relationships.</p> <p>10 Q. (BY MR. KATZ) Where does it say they're 11 required? I thought we agreed that the agreement 12 doesn't use the word require.</p> <p>13 A. No.</p> <p>14 Q. It just says it's the current intention.</p> <p>15 Isn't that the language?</p> <p>16 A. It is the intention, yes; not negative 17 intention. Positive intention to move forward.</p> <p>18 Q. Right, but it doesn't say anywhere that NAM 19 is required to do any of the things you just 20 mentioned, right?</p> <p>21 MR. RICH: Objection.</p> <p>22 A. It is the intention.</p> <p>23 Q. (BY MR. KATZ) Right.</p> <p>24 A. They would not buy a company with bad</p>

37 (Pages 142 to 145)

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1 **intentions; otherwise, that would be bad faith.**
 2 **Otherwise, it would show that they had no**
 3 **intention. The fact is, they never did operate the**
 4 **business. They took it apart in pieces, so --**

5 Q. We'll get to your concerns on those
 6 subjects, but you'll agree with me that the
 7 agreement itself does not use the word requirement
 8 with respect to the three things you just
 9 mentioned?

10 **A. The words in the document say, I believe --**
 11 **I will read them, because I always forget them. It**
 12 **is the buyer's current intention.**

13 Q. Not requirement, right?
 14 **A. Intention.**

15 Q. Not requirement, right?
 16 **A. Intention.**

17 MR. RICH: Objection. Asked and
 18 answered.

19 Q. (BY MR. KATZ) I'm just asking you to
 20 answer yes or no.

21 **A. The word they use is intention.**

22 Q. It is not requirement, correct?

23 **A. The word they did not use is requirement.**

24 Q. Okay. We're going to back and now talk a

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 1 little bit about database management. That can
 2 also be referred to as web hosting? Is that a fair
 3 statement?

4 **A. No.**

5 Q. Is web hosting part of database management?

6 **A. Web hosting is a distribution method of**
 7 **database management.**

8 Q. So it's related to database management?

9 **A. It's a point of distribution from which a**
 10 **database can speak.**

11 Q. How did you start in the database
 12 management business with CCM?

13 **A. Customers were requiring that we take**
 14 **transaction data from the point of sale and put it**
 15 **into a usable format.**

16 Q. Have you ever heard of this kind of
 17 business being referred to as ASP?

18 **A. ASP is a type of way of hosting**
 19 **information.**

20 Q. Had you been doing ASP prior to the
 21 acquisition with NAM?

22 **A. Yes.**

23 Q. And you had a web hosting capability
 24 located in your Braintree office, right?

38 (Pages 146 to 149)

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1 **A. That is correct.**

2 Q. But you didn't have any security for this
 3 computer system, did you?

4 **A. We had absolute security.**

5 Q. Tell me about that.

6 **A. First of all, the computers were in a**
 7 **secured room.**

8 Q. Tell me about the room.

9 **A. It was built. It was a room.**

10 Q. Was it locked?

11 **A. Yes.**

12 Q. Who had keys?

13 **A. Our electrician and our head of database**
 14 **management.**

15 Q. What kind of back-up did you do to the
 16 system?

17 **A. I can't tell you that specifically.**

18 Q. Was any back-up done?

19 **A. Yes, it was. I know they backed it up on**
 20 **tapes. Whether they backed it up to other**
 21 **computers, I don't know.**

22 Q. How do you know this?

23 **A. Because we talked about having a back-up.**

24 Q. Who developed or purchased the technology

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1 that was used on your system in Braintree?

2 **A. Those are two questions.**

3 Q. Okay.

4 **A. We defined the development of the product**
 5 **and it was actually constructed by a company in**
 6 **Wellesley, Mass.**

7 Q. What was the name of the company?

8 **A. I don't remember.**

9 Q. Okay. And the name of the system was what?

10 **A. The MAS, Marketing Analysis System.**

11 Q. And how many database management clients
 12 did you have prior to the 1999 Stock Purchase
 13 Agreement?

14 **A. Several.**

15 Q. Can you name them?

16 **A. Nash Finch was one. Sullivan Stores was**
 17 **another. I don't remember all of them. Duane**
 18 **Reade.**

19 Q. They used the MAS system?

20 **A. I believe so.**

21 Q. So you can't remember any other than Nash
 22 Finch, Sullivan and Duane Reade?

23 **A. No, and then you had Blue Square. There**
 24 **were others. I do not at this moment recall a**

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<p style="text-align: right;">Page 150</p> <p>1 comprehensive list, but it is in the documents.</p> <p>2 Q. But you can only remember four as you sit</p> <p>3 here today?</p> <p>4 A. At the moment, four come to mind.</p> <p>5 Q. How many stores did Nash Finch have?</p> <p>6 A. I do not recall.</p> <p>7 Q. And where is Nash Finch located?</p> <p>8 A. Minneapolis.</p> <p>9 Q. Just in Minneapolis?</p> <p>10 A. No, they have stores in -- you asked me</p> <p>11 where they're headquartered. They're headquartered</p> <p>12 in Minneapolis. They have stores in many states.</p> <p>13 Q. Did they use you for all their stores?</p> <p>14 A. I don't recall.</p> <p>15 Q. When you say many states, how many states?</p> <p>16 A. I don't recall. There's several.</p> <p>17 Q. More than two?</p> <p>18 A. Yes.</p> <p>19 Q. And then you don't know how many stores</p> <p>20 they had total at the time you were doing business</p> <p>21 with them?</p> <p>22 A. No, I don't.</p> <p>23 Q. Okay. Sullivan, what is Sullivan?</p> <p>24 A. Sullivan's is a supermarket chain.</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Do you know that not to be a fact?</p> <p>2 MR. RICH: Objection.</p> <p>3 A. I know for a fact that they have them</p> <p>4 outside of New York City.</p> <p>5 Q. (BY MR. KATZ) Blue Square, what is Blue</p> <p>6 Square?</p> <p>7 A. It's a supermarket chain.</p> <p>8 Q. Where in?</p> <p>9 A. In Israel.</p> <p>10 Q. And how many stores?</p> <p>11 A. I don't know.</p> <p>12 Q. What was the dollar value of business that</p> <p>13 you received from Nash Finch for database</p> <p>14 management?</p> <p>15 A. I don't remember.</p> <p>16 Q. In 1998?</p> <p>17 A. I do not remember.</p> <p>18 Q. Now, you were the person responsible for</p> <p>19 selling all of these accounts, right?</p> <p>20 A. Yes.</p> <p>21 Q. But as you sit here now, you don't remember</p> <p>22 how much business you were getting from any of your</p> <p>23 database management clients?</p> <p>24 A. I do not remember the specific information</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. Where?</p> <p>2 A. They're in the midwest.</p> <p>3 Q. Where in the midwest?</p> <p>4 A. I don't know.</p> <p>5 Q. Have you ever been there?</p> <p>6 A. No.</p> <p>7 Q. How many stores?</p> <p>8 A. I don't recall.</p> <p>9 Q. How many states?</p> <p>10 A. I don't know.</p> <p>11 Q. Duane Reade is located in New York?</p> <p>12 A. Yes.</p> <p>13 Q. Just in New York?</p> <p>14 A. I do not know that for a fact. They are --</p> <p>15 they're headquartered in New York.</p> <p>16 Q. How many stores?</p> <p>17 A. Hundreds.</p> <p>18 Q. But all in New York?</p> <p>19 A. I don't know if they're only in New York.</p> <p>20 They may be in other states.</p> <p>21 Q. But to your knowledge there aren't any</p> <p>22 others outside of New York City, really, for that</p> <p>23 matter?</p> <p>24 A. I don't know that to be a fact.</p>	<p style="text-align: right;">Page 153</p> <p>1 regarding those sales that happened in 1998.</p> <p>2 Q. Did all of them make use of the MAS system?</p> <p>3 A. Yes.</p> <p>4 Q. And if we could go back to Mr. Coughlin's</p> <p>5 memo, which is Exhibit 16, and if we could look</p> <p>6 again -- actually, hold off on that for just a</p> <p>7 second. Who were your competitors in the database</p> <p>8 management area?</p> <p>9 A. Market Expert.</p> <p>10 Q. And who produced that?</p> <p>11 A. A company called Market Expert.</p> <p>12 Q. Right. And who used it?</p> <p>13 A. Several supermarket chains.</p> <p>14 Q. What chains?</p> <p>15 A. I don't remember.</p> <p>16 Q. Did Catalina or Valassis have a presence in</p> <p>17 this area?</p> <p>18 A. Not in 19-- not -- well, what time frame</p> <p>19 are you speaking about?</p> <p>20 Q. 1999.</p> <p>21 A. In 1999?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, Catalina and -- Catalina was entering</p> <p>24 into it, and I don't know whether Valassis in 1999</p>

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1 **had entered into it or after the fact.**
 2 Q. Okay, so tell me what you remember about
 3 Catalina's entrance into the business.
 4 **A. They bought a comparable company to CCMI.**
 5 Q. What was the name of that company?
 6 **A. I don't remember the exact name.**
 7 Q. Did you know the people involved in that
 8 company?
 9 **A. I knew the owner.**
 10 Q. Where was it based?
 11 **A. New York.**
 12 Q. And do you know what Catalina paid for it?
 13 **A. I do not.**
 14 Q. And the company did something along the
 15 lines of what you did insofar as database
 16 management is concerned?
 17 **A. They had a tool that was not as**
 18 **sophisticated as our tool.**
 19 Q. What was the name of their tool?
 20 **A. I don't remember.**
 21 Q. But Marketing Expert was something that was
 22 used by stores in-house; is that right?
 23 **A. Yes. They did not have an ASP model, to my**
 24 **knowledge.**

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1 **A. I didn't need new technology. I needed a**
 2 **point of distribution to the Internet, and we felt**
 3 **that it was a good extension of our product to be**
 4 **able to have that functionality.**
 5 Q. So you wanted to get -- you wanted to have
 6 some product that gave you functionality with the
 7 Internet?
 8 **A. Yes, that is correct.**
 9 Q. Okay. And when did you first make that
 10 clear to anyone at News America Marketing?
 11 **A. Prior to the sale.**
 12 Q. And who had told you that functionality
 13 involving communications with the customer over the
 14 Internet was something that was important?
 15 **A. Customers.**
 16 Q. Which customers?
 17 **A. I don't remember the exact list of**
 18 **customers.**
 19 Q. And when you talk about functionality, by
 20 way of communications with the customer over the
 21 Internet, are you talking about e-mails or simply
 22 access to a website?
 23 **A. We were talking about e-mails.**
 24 Q. So the idea would be that you would have a

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1 Q. And who were the stores, to the best of
 2 your recollection, that actually used Marketing
 3 Expert at this point in time?
 4 **A. I don't remember their client list. Mostly**
 5 **supermarkets.**
 6 Q. Big supermarkets?
 7 **A. Oh, I don't know. Mid-size supermarkets.**
 8 Q. Not big ones?
 9 **A. I don't know. I don't remember their**
 10 **client list.**
 11 Q. Did you know at one time?
 12 **A. Yes.**
 13 Q. Were there complaints about the limitation
 14 of what you could do with your MAS product?
 15 **A. Not complaints. A request to expand the**
 16 **service.**
 17 Q. Okay. And tell me about what the requests
 18 -- those requests were, to the best of your
 19 recollection, in the 1999 time period.
 20 **A. The request was to be able to communicate**
 21 **to the customer through the Internet.**
 22 Q. And did you see that as something that you
 23 wanted your new technology, should you get new
 24 technology, to be able to do?

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1 targeted group of customers with e-mail addresses
 2 to whom you could send marketing material via
 3 e-mail?
 4 **A. That was one function.**
 5 Q. And was that something that you pursued
 6 once the acquisition took place?
 7 **A. Yes.**
 8 Q. And who did you pursue it with?
 9 **A. We -- Bob had started dialogs with several**
 10 **companies to look at what -- what companies had**
 11 **this kind of capability and understood how to do**
 12 **it, and then he selected a company to work with**
 13 **called Epiphany.**
 14 Q. Was it your impression that Epiphany had
 15 the ability to have this kind of functionality
 16 whereby you could direct communications on behalf
 17 of a retailer to a customer over the Internet --
 18 **A. I believe --**
 19 Q. -- via e-mail?
 20 **A. I believe that was so.**
 21 Q. Okay. Your -- going back to Mr. Coughlin's
 22 memo and going back to page FR 2677 --
 23 **A. 2677?**
 24 Q. Do you see that?

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<p style="text-align: right;">Page 158</p> <p>1 A. 2677.</p> <p>2 Q. Mm-hmm. Your 1996 revenue for database 3 management was \$569,000, approximately, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And then, in 1997, it was about 1.2 million 6 dollars, right?</p> <p>7 A. Correct.</p> <p>8 Q. And it was about the same amount in 1998, 9 right? About \$1.2 million?</p> <p>10 A. Apparently.</p> <p>11 Q. Do you remember what accounted for the jump 12 from 1996 to 1997 from 569,000 to 1.2 million?</p> <p>13 A. A number of accounts.</p> <p>14 Q. Do you remember which accounts those were?</p> <p>15 A. I do not.</p> <p>16 Q. Let's turn now to consulting and marketing 17 programs. Could you describe for me what these 18 consisted of?</p> <p>19 A. Consulting is -- was straight-up advice 20 that we presented to retailers at their request to 21 help them build programs.</p> <p>22 Q. This was something that you would provide 23 personally in many cases?</p> <p>24 A. And my team.</p>	<p style="text-align: right;">Page 160</p> <p>1 manufacturers, or for just one of those?</p> <p>2 A. Mostly retailers.</p> <p>3 Q. Rarely manufacturers or ever manufacturers?</p> <p>4 A. No, we did consult with manufacturers, but 5 for the most part, the consulting was done for 6 retailers.</p> <p>7 Q. Okay. And apart from your consulting, what 8 else did you do --</p> <p>9 A. We built programs.</p> <p>10 Q. -- that fit under the heading consulting 11 and marketing programs?</p> <p>12 A. We built marketing programs. We did 13 airline promotions. We did travel clubs. We 14 executed targeted direct mail.</p> <p>15 Q. Who did you do targeted direct mail for?</p> <p>16 A. Manufacturers.</p> <p>17 Q. Which manufacturers?</p> <p>18 A. The Gillette Company, the Kraft Company, 19 Campbell Soup.</p> <p>20 Q. Was this all prior to the acquisition by 21 News America Marketing in 1999?</p> <p>22 A. I don't remember which programs were 23 executed in which years.</p> <p>24 Q. So Gillette and Kraft may have occurred</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Who was your team?</p> <p>2 A. Jerry Clapp.</p> <p>3 Q. Anyone else?</p> <p>4 A. Mike Forhez.</p> <p>5 Q. How do you spell Mike's last name?</p> <p>6 A. F-O-R -- I don't know exactly any more.</p> <p>7 F-O-R-H-E-Z.</p> <p>8 Q. And anyone else?</p> <p>9 A. And Bill Adam.</p> <p>10 Q. And would you go to a client's location and 11 give a talk or give a presentation for a period of 12 time?</p> <p>13 A. Yes.</p> <p>14 Q. And that's typically how you'd earn your 15 fees?</p> <p>16 A. Yes.</p> <p>17 Q. Fees would be in the neighborhood of \$2,500 18 to maybe higher than that?</p> <p>19 A. Fees were on -- either on a per diem basis, 20 per person at about \$3,000 a day, or they were on a 21 project basis, which could be \$50,000.</p> <p>22 Q. And that was your consulting was?</p> <p>23 A. That was the consulting practice.</p> <p>24 Q. And was it for both retailers and</p>	<p style="text-align: right;">Page 161</p> <p>1 after the acquisition?</p> <p>2 A. Gillette occurred the before the 3 acquisition.</p> <p>4 Q. How about Kraft?</p> <p>5 A. I'll have to -- I don't know.</p> <p>6 Q. Kraft you're not sure? It could be one way 7 or the other? Is that what you're saying?</p> <p>8 A. I don't recall the timing.</p> <p>9 Q. Okay. You'd agree with me, though, that 10 your revenue in 1996, '97 and '98 in the consulting 11 and marketing area was small?</p> <p>12 A. And growing.</p> <p>13 Q. Well, let's take a look. In 1996, you had 14 \$130,000 in consulting and marketing revenue, 15 right?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. Is that a yes?</p> <p>18 A. Yes.</p> <p>19 Q. And then it dropped in 1997 to \$57,000?</p> <p>20 A. Yes.</p> <p>21 Q. And then in 1998 it was \$72,000, right?</p> <p>22 A. Yes.</p> <p>23 Q. Those are the numbers, right?</p> <p>24 A. Yeah.</p>

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1 Q. At the time of the acquisition of CCMI on
 2 August 13th, 1999, you had only three manufacturing
 3 clients; isn't that a fact?

4 **A. I don't remember.**

5 Q. Let's go to Schedule 4.11 again of the
 6 Stock Purchase Agreement. You had three retail
 7 clients -- I'm sorry; three manufacturing clients
 8 as of the date of the Stock Purchase Agreement,
 9 right?

10 **A. Yes.**

11 Q. They were Alberto Culver, Fuji Film and
 12 L'Eggs Products? That's L apostrophe E-G-G-S
 13 Products.

14 **A. Yes.**

15 Q. Could you list for me all the new
 16 manufacturing clients CCMI had during the period
 17 you were employed with News America Marketing?

18 **A. No, I cannot list for you all of them. I
 19 can tell you there were several of them.**

20 Q. Can you list as many as you can remember
 21 sitting here today?

22 **A. I will give you a list of some. Campbell
 23 Soup was one. A coffee company, Le -- I don't know
 24 how to say it, so -- very strong coffee. Coffee**

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1 **beginning to end. In 2000 and -- what year is
 2 this? 2003. No manufacturing salespeople in CCMI
 3 reported to me in 2003. They reported to other
 4 people in the company. I had no control over it.**

5 Q. But you received revenue from their efforts
 6 insofar as your earn-out was calculated; isn't that
 7 right?

8 **A. Nominal amount of money. Their efforts
 9 were nominal, because there was no major sales
 10 force to sell the products and I received revenue
 11 as related to what little business did happen.**

12 Q. You may have answered this question
 13 already, but what about your business do you
 14 believe News America Marketing found attractive?

15 **A. News America Marketing stated that they
 16 found our retailer relationships attractive, our
 17 database knowledge attractive, and the belief that
 18 manufacturers would execute targeted marketing
 19 programs using retailer databases attractive.**

20 Q. Let's go back to Mr. Coughlin's memo. Just
 21 to recap again, in 1996, gross revenue was
 22 \$2.5 million for CCMI, right?

23 **A. Yes.**

24 Q. In 1997, CCMI's total gross revenue was

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1 **company was one. Caesar's cat food. I don't
 2 remember the others.**

3 Q. Let's mark as our next exhibit a
 4 SmartSource Direct billing report for approximately
 5 2003.

6 (Exhibit 49 marked for identification.)

7 Q. Ms. Raider, if you could take a look at
 8 Exhibit 49 and see if that refreshes your
 9 recollection as to any additional new retail
 10 clients -- I'm sorry; manufacturing clients that
 11 came on board with you after the acquisition of
 12 CCMI by News America Marketing.

13 **A. Well, you have them stated here.**

14 Q. Well, tell me what you see.

15 **A. You have Glaxo Smithkline, you have
 16 Lactaid, you have Tele-Wish, Tele-Friend, you have
 17 -- I think that's it.**

18 Q. Do you remember any of these projects?

19 **A. If the question you're asking me is do I
 20 remember that these projects occurred, I remember
 21 that they occurred.**

22 Q. But these were not projects that you
 23 participated in?

24 **A. These were not projects that I managed**

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1 \$7.9 million, right?

2 **A. Yes.**

3 Q. And then in 1998, CCMI's total gross
 4 revenue slipped to \$3.7 million, right?

5 **A. Yes.**

6 Q. Now, you had a settlement of a lawsuit that
 7 year for approximately \$445,000; isn't that right?

8 **A. I have no recollection of a lawsuit.**

9 Q. Okay. And I think you told us that you
 10 thought that the revenue was higher in 1997 because
 11 of the roll-out of the Lucky Stores loyalty
 12 program; is that right?

13 **A. I told you that I believed that that could
 14 have been the case.**

15 Q. You'd agree with me that these numbers
 16 reflect that there are ups and downs in business,
 17 right?

18 **A. These numbers reflect there was an up and
 19 down in our business at this point in time.**

20 Q. And ups and downs are a part of business
 21 life; isn't that right?

22 MR. RICH: Objection.

23 **A. Not necessarily so. I don't think Google
 24 would appreciate that comment.**

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<p style="text-align: right;">Page 166</p> <p>1 Q. (BY MR. KATZ) But the company that you 2 worked at after you left H.P. Hood wasn't a Google, 3 right? 4 A. The company that I worked for after I left 5 H.P. Hood was a very sound business where the 6 investors made a commitment not to fund a national 7 roll-out. There was nothing wrong with the 8 business operation. There was no up and down in 9 that business. There was a straight line up. The 10 discussion about rolling it out is what affected 11 that business. There was no up and down in that 12 business. 13 Q. It was down when it went out of business, 14 wasn't it? 15 A. When they closed the doors, it went to 16 zero. Prior to that, it did not. 17 Q. And you weren't able to find people with 18 money who were willing to put their money on the 19 line in order to advance the business forward; 20 isn't that right? 21 A. No, sir, that's not right. 22 Q. Then why didn't the business go forward? 23 A. First of all, I did not do any of the 24 negotiation. I was not the CEO.</p>	<p style="text-align: right;">Page 168</p> <p>1 1 don't want any product at all, so they won't buy 2 it. 3 Q. It's just a fact that there are no 4 guarantees in business; isn't that right? 5 A. I think that's a very broad statement that 6 there are no guarantees in business. I think that 7 one could make the argument that there are 8 guarantees in business. There's guarantees that 9 you'll open the door, answer the phone and talk to 10 customers, so I think there are some guarantees in 11 business. 12 Q. Well, you can't guarantee that a business 13 that is here today is going to be here tomorrow, 14 can you? 15 A. You cannot guarantee that a business that 16 is improperly run will not have a future. 17 Q. Now, Mr. Coughlin or others made 18 projections in the summer of 1999 as to what he 19 thought the post-acquisition CCMi business would 20 be, right? 21 A. I don't believe that Mr. Coughlin made 22 projections independent of anyone else. 23 Q. Okay. Did -- let's look at the projections 24 that are contained still on FR 2677. Who made the</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. When I say you, I mean people -- 2 A. The company was a hundred percent owned by 3 an investment banking firm who made the decision on 4 where they would put their assets. It had nothing 5 to do with convincing them. They made a decision 6 on where to put their assets. 7 Q. But you'd agree with me, would you not, 8 that there's risk in every business, right? 9 A. Yes. 10 Q. And in every day, every day in business, 11 you risk that your customers might go to a 12 competitor, right? 13 A. Not if they're under contract. 14 Q. Well, not if they're under contract, but 15 when the contract's over, they might go to a 16 competitor, right? 17 A. That is correct. 18 Q. Or they might decide that they don't want 19 the product that you're selling? 20 A. That is an option where someone might buy 21 product from someone else. 22 Q. Or they might choose that they don't want 23 the product at all, right? 24 A. Or that's possible. They may choose they</p>	<p style="text-align: right;">Page 169</p> <p>1 projections that are on FR 2677? 2 A. Well, first of all, 2677 -- oh, you're 3 talking about the projections? 4 Q. Yes. 5 A. Bob Fireman and I worked with Bill Adam and 6 Jerry Clapp and Robert Coughlin to talk about who 7 were the targeted accounts and how the business 8 would grow. 9 Q. And the group of CCMi individuals that you 10 just identified were the people who made the 11 projections that are contained on FR -- 12 A. We helped to formulate them, yes. 13 Q. And Mr. Coughlin recorded them for your 14 benefit? 15 A. I believe that's right. 16 Q. Okay. I'm actually going to switch to page 17 FR 2675, which is a year that a set of projections 18 that is the second page of Mr. Coughlin's July 19 sixth, 1999 memo, and I believe is close to if not 20 identical to the projections on FR 2677. Are you 21 with me? 22 A. Well, I don't know if they're -- I assume 23 they are. Your saying they're identical? 24 Q. No, I'm not sure they're identical. I</p>

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1 haven't checked them one by one, but they're close
 2 to identical if not identical. There's no major
 3 deviation, correct?

4 **A. Well, I don't know. I'd have to look at
 5 them in detail.**

6 Q. Well, just take a second or two to convince
 7 yourself that they're pretty close to the same, if
 8 not identical.

9 **A. Well, they're -- they're directionally the
 10 same. They're not -- so they're somewhere between
 11 a half a million and \$3 million off, one to the
 12 other --**

13 Q. Okay. Of the --

14 **A. -- on the revenue line.**

15 Q. Okay. Do you believe that the more
 16 accurate version of your projections is on page two
 17 or on -- or rather on page FR 2675 or page FR 2677?

18 **A. I can't tell.**

19 Q. Okay. You're not sure?

20 **A. I'm not sure.**

21 Q. Okay. In any event, you reviewed these
 22 projections at the time, right?

23 **A. Yes.**

24 Q. You thought they were correct?

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1 By July sixth, 1999, Mr. Coughlin was telling you
 2 that post acq-- that according to CCMI's own
 3 internal projections for sales, after the
 4 acquisition, you and Mr. Fireman would not meet the
 5 gross margin necessary to earn any bonus payments?

6 **A. I don't believe that to be true.**

7 Q. Let's take a look at the first page of
 8 Mr. Coughlin's July 6th, 1999 memorandum. Could
 9 you read into the record the last sentence of the
 10 memo?

11 **A. According to this schedule, this schedule
 12 meaning not what he put together, but what was
 13 prepared by Julie Openshaw, we would not meet the
 14 necessary margin. According to the way Julie
 15 defined her calculations as was defined by gross
 16 margin, there's no correlation between the Stock
 17 Purchase Agreement and gross margin. In fact,
 18 there's a discrepancy in how Julie did it, and
 19 therefore, Robert was alerting us to the fact that
 20 given the way that Julie did these numbers, there's
 21 an issue.**

22 Q. Tell us what was the issue.

23 **A. I don't remember.**

24 Q. But you knew that someone was telling you

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1 **A. Yes.**

2 Q. And you projected that CCMI would have
 3 \$50 million in sales growth in five years after the
 4 acquisition?

5 **A. That is correct.**

6 Q. Okay. And in fact, in your interrogatory
 7 answers, you say that News America Marketing
 8 reviewed CCMI's business plan, which was designed
 9 to achieve \$50 million in sales growth within five
 10 years, right?

11 **A. That is correct.**

12 Q. But by July sixth, 1999, Mr. Coughlin was
 13 telling you that according to CCMI's internal
 14 projections, you and Mr. Fireman would not meet the
 15 gross margin necessary to earn any bonus payments;
 16 isn't that right?

17 **A. I'm sorry. Could you repeat the question?**

18 Q. By July sixth, 1999, Mr. Coughlin was
 19 telling you that according to CCMI's internal
 20 projections, you and Mr. Fireman would not meet the
 21 gross margin necessary to earn any bonus payments?

22 **A. We still owned the company in 1999. This
 23 had nothing to do with NAM.**

24 Q. Well, let me rephrase the question, then.

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1 that there was a very good chance that you were not
 2 going to meet the gross margin necessary to earn
 3 any bonus payments?

4 MR. RICH: Objection.

5 **A. This memo is telling us that the definition
 6 of gross margin as I discussed it with David DeVoe
 7 was not being reflected in the calculations that
 8 Julie was doing.**

9 Q. (BY MR. KATZ) And at the end of the day,
 10 which margin -- which definition of gross margin
 11 prevailed?

12 **A. I believe it's the definition of gross
 13 margin -- which one?**

14 Q. Was it the one that Mr. DeVoe wanted or the
 15 one that you wanted?

16 **A. I do not recall. Gross margin as we
 17 defined it was what was direct expenses we could
 18 control. Unfortunately, I believe that other
 19 things were added into the reduction of gross
 20 margin that were not what we decided should be
 21 deducted.**

22 Q. Now, let's go back to FR 2675 Mr. Coughlin
 23 or -- I use Mr. Coughlin because he's the author of
 24 the memo, but it must have been all of you. You

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<p>1 projected a total revenue of \$8.3 million for year 2 one, right? 3 A. Yes. 4 Q. And you projected total revenue of 5 \$23 million for year two, right? 6 A. Yes. 7 Q. So you remember going to almost triple your 8 gross income in one year, right? 9 A. Yes. 10 Q. How was that going to happen? 11 A. We were going to have access to the News 12 America Marketing manufacturing sales force and 13 they were going to help us sell targeted direct 14 programs to manufacturers across the United States. 15 Q. But you had no certainty that they were 16 going to be able to make those sales, right? 17 A. We had a commitment in good faith that we 18 had access to their sales force who calls on 19 hundreds of packaged goods manufacturers throughout 20 the United States and that they would in fact talk 21 to them about our product line so that we could 22 make those sales. 23 Q. But that commitment is nowhere stated in 24 those terms in the Stock Purchase Agreement, is it?</p>	<p>Page 174</p> <p>1 News sales organization and that is how the 2 business was going to grow, because that is where 3 the opportunity was, and that is the focus of News 4 America Marketing. They call on manufacturers to 5 sell products. And we had the discussions about 6 how we would grow our business, and the discussions 7 centered around their commitment, written or not, 8 about helping us sell our products to their client 9 base for which we would get mutual profitable 10 benefits. 11 Q. But isn't it a fact that after the 12 acquisition, News America Marketing went out and 13 hired a sales staff to sell to manufacturers along 14 the lines you've just described full-time? 15 A. Mr. Katz, from the year -- from 1999, 16 September, when we sold the business, we had no 17 significant sales force. We had one person calling 18 on manufacturers. In fact, before 1999, September, 19 News America had made a decision to reorganize 20 their sales force with no knowledge to us and they 21 were focused on their reorganization and 22 eliminating sales positions, which we were never 23 aware of, so they in fact cut their sales force, 24 reorganized their sales force, and we had no</p>
<p>1 A. The commitment stated in the terms says 2 that they will -- they have the intention to do it. 3 Q. That's all it says, right? 4 A. And I was led to believe in conversations 5 with David DeVoe that we would have access to that 6 sales organization and we did not. 7 Q. But there's nothing in the Stock Purchase 8 Agreement that says that News America Marketing 9 commits itself to use its preexisting sales 10 organization to sell CCM's products; isn't that 11 right? 12 A. Mr. Katz, you don't sell one business to 13 another company and have a plan to make it grow 14 without a business understanding, regardless of the 15 stated document. It said they had the intention. 16 If I told you that I had the intention to do 17 something, I would believe you that you were going 18 to do it, because you're a gentleman and you have 19 integrity and you're dealing in honesty, and 20 therefore, the discussions regarding the business 21 plan as we put it together that they looked at had 22 no people assigned for the manufacturing sales 23 force. The manufacturing sales force, which was to 24 take the -- those products were to be sold by the</p>	<p>Page 175</p> <p>1 knowledge they were making those changes, and they 2 were in the middle of a major reorganization of 3 their sales force, so they did not tell us they 4 were going to do that, so we had no previous 5 knowledge that they were making those changes in 6 their sales force, number one. 7 Number two, if you look at the sequence 8 of time, we sold the business in August of 1999. 9 We in fact had staff taken away from us that went 10 to Connecticut. We had no manufacturing sales 11 force to speak of of any kind. They said we could 12 share other people as part of the organization who 13 had no knowledge of our products. They would not 14 let us present to the entire sales force what we 15 did so we could get them to sell. So when you make 16 the statement that they let us hire people, I would 17 say maybe they let us hire one or two people in a 18 year or two after the company was sold, but 19 certainly not in the immediate time frame that 20 after which we wanted the business to grow, so I 21 think you have to look at the sequence of events in 22 terms of timing and intention or not intention. 23 Q. Okay. Well, let's go back to the numbers 24 again.</p>
<p>1 projected a total revenue of \$8.3 million for year 2 one, right? 3 A. Yes. 4 Q. And you projected total revenue of 5 \$23 million for year two, right? 6 A. Yes. 7 Q. So you remember going to almost triple your 8 gross income in one year, right? 9 A. Yes. 10 Q. How was that going to happen? 11 A. We were going to have access to the News 12 America Marketing manufacturing sales force and 13 they were going to help us sell targeted direct 14 programs to manufacturers across the United States. 15 Q. But you had no certainty that they were 16 going to be able to make those sales, right? 17 A. We had a commitment in good faith that we 18 had access to their sales force who calls on 19 hundreds of packaged goods manufacturers throughout 20 the United States and that they would in fact talk 21 to them about our product line so that we could 22 make those sales. 23 Q. But that commitment is nowhere stated in 24 those terms in the Stock Purchase Agreement, is it?</p>	<p>Page 174</p> <p>1 News sales organization and that is how the 2 business was going to grow, because that is where 3 the opportunity was, and that is the focus of News 4 America Marketing. They call on manufacturers to 5 sell products. And we had the discussions about 6 how we would grow our business, and the discussions 7 centered around their commitment, written or not, 8 about helping us sell our products to their client 9 base for which we would get mutual profitable 10 benefits. 11 Q. But isn't it a fact that after the 12 acquisition, News America Marketing went out and 13 hired a sales staff to sell to manufacturers along 14 the lines you've just described full-time? 15 A. Mr. Katz, from the year -- from 1999, 16 September, when we sold the business, we had no 17 significant sales force. We had one person calling 18 on manufacturers. In fact, before 1999, September, 19 News America had made a decision to reorganize 20 their sales force with no knowledge to us and they 21 were focused on their reorganization and 22 eliminating sales positions, which we were never 23 aware of, so they in fact cut their sales force, 24 reorganized their sales force, and we had no</p>
<p>1 A. The commitment stated in the terms says 2 that they will -- they have the intention to do it. 3 Q. That's all it says, right? 4 A. And I was led to believe in conversations 5 with David DeVoe that we would have access to that 6 sales organization and we did not. 7 Q. But there's nothing in the Stock Purchase 8 Agreement that says that News America Marketing 9 commits itself to use its preexisting sales 10 organization to sell CCM's products; isn't that 11 right? 12 A. Mr. Katz, you don't sell one business to 13 another company and have a plan to make it grow 14 without a business understanding, regardless of the 15 stated document. It said they had the intention. 16 If I told you that I had the intention to do 17 something, I would believe you that you were going 18 to do it, because you're a gentleman and you have 19 integrity and you're dealing in honesty, and 20 therefore, the discussions regarding the business 21 plan as we put it together that they looked at had 22 no people assigned for the manufacturing sales 23 force. The manufacturing sales force, which was to 24 take the -- those products were to be sold by the</p>	<p>Page 175</p> <p>1 knowledge they were making those changes, and they 2 were in the middle of a major reorganization of 3 their sales force, so they did not tell us they 4 were going to do that, so we had no previous 5 knowledge that they were making those changes in 6 their sales force, number one. 7 Number two, if you look at the sequence 8 of time, we sold the business in August of 1999. 9 We in fact had staff taken away from us that went 10 to Connecticut. We had no manufacturing sales 11 force to speak of of any kind. They said we could 12 share other people as part of the organization who 13 had no knowledge of our products. They would not 14 let us present to the entire sales force what we 15 did so we could get them to sell. So when you make 16 the statement that they let us hire people, I would 17 say maybe they let us hire one or two people in a 18 year or two after the company was sold, but 19 certainly not in the immediate time frame that 20 after which we wanted the business to grow, so I 21 think you have to look at the sequence of events in 22 terms of timing and intention or not intention. 23 Q. Okay. Well, let's go back to the numbers 24 again.</p>

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<p>1 MR. RICH: Do you want to take a break? 2 Are you okay? 3 A. I'm fine. 4 (Comments off the record.) 5 Q. (BY MR. KATZ) For year one, you have your 6 revenue projection of 8.3 million dollars, right? 7 A. Yes. 8 Q. You'd agree with me that there was no 9 certainty that that revenue was going to 10 materialize? 11 A. Oh, absolutely I would not agree with you. 12 We had every indication that that sales dollar 13 would materialize. We had every belief it would 14 materialize. We were so distracted in going to 15 meetings, in reorganizing, having people shipped to 16 Connecticut, taking down database functions, no 17 support, no accounting support. We spent a lot of 18 time running around trying to figure out how to get 19 the business to stay together. We had a total 20 distraction of months of making presentations to 21 David DeVoe and creating meetings and that -- all 22 of that distraction prohibited us. We believed 23 unequivocally we could make that number if we could 24 stay focused on running our business and if we got</p>	<p>Page 178</p> <p>1 to be some period of time that you were going to be 2 distracted as a result of the integration that was 3 necessary for you to join News America Marketing? 4 A. I did not think I was going to be 5 distracted. I believed Bob would be focusing on 6 those issues as the CEO of CCMI and that I would be 7 able to run the business and have the staff and 8 work on hiring people. We were prevented from 9 hiring talented people at the time of the 10 acquisition because someone in News America didn't 11 like this person named Rich Green. We were 12 prevented from being -- from getting the sales 13 force in News America to even want to know about 14 our products because they were busy doing their 15 reorganization.</p> <p>16 Q. But there were a lot of people that you 17 interviewed that you didn't like, right? 18 A. We did not have any -- for a period of 19 several months, we got no candidates.</p> <p>20 (Off the record.)</p> <p>21 (Exhibit 50 marked for identification.)</p> <p>22 Q. (BY MR. KATZ) Before we went off the 23 record, you said, Ms. Raider, that we didn't have 24 any candidates for a period of time, and I have</p>
<p>1 support from them. 2 Q. So it was other people's fault you couldn't 3 stay focused? Is that what you're saying? 4 A. We were distracted by other things related 5 to being incorporated into an organization. 6 Q. And you couldn't manage that distraction so 7 that you could stay focused on doing your business? 8 MR. RICH: Objection. 9 A. We had no staff, sir, and therefore, we did 10 every piece of business seven days a week for weeks 11 on end keeping the business moving while we were 12 distracted by other things related to being 13 incorporated into a corporation. 14 Q. (BY MR. KATZ) And prior to the 15 acquisition, you didn't see in advance that there 16 was going to be a period of time in which it was 17 going -- in which your time was going to be called 18 for to facilitate the integration? Is that what 19 you're saying? 20 A. I believe there was a discussion where 21 there was a 60-day period when that would -- when 22 we would finish all the material things, that we 23 would work on some of the corporate stuff. 24 Q. So you knew in advance that there was going</p>	<p>Page 179</p> <p>1 shown you a document we've marked as Exhibit 50, 2 and I show you page two of Exhibit 50, and page two 3 of Exhibit 50 reflects the fact that beginning in 4 September of -- beginning at least in September of 5 1999, you were reviewing resumes for -- for 6 salespeople; isn't that right? 7 A. This document shows you that the source of 8 the people that they were sending to us were 9 Monster people, from Monster, and those people 10 really did not have the correct qualifications, so 11 where they were getting their source of people was 12 not the people who had the right qualifications for 13 what we needed for the work that we needed to get 14 done, so while they may have secured some resumes, 15 they didn't -- they weren't the people who had any 16 of the right qualifications. Our requirement for 17 staff to do relationship selling was very different 18 than the News America organization, which were 19 fundamentally order takers.</p> <p>20 Q. Yet you wanted that organization to be your 21 sales staff? 22 A. We wanted that organization to open the 23 door to the entire customer base that they had 24 access to to make them aware that we had this</p>

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<p style="text-align: right;">Page 182</p> <p>1 ability. At the time that the company was sold, 2 most of the households in America were going to 3 have a loyalty card in their pocket, which gave 4 them access to hundreds of millions of people where 5 you could track purchase behavior, and 6 manufacturers were taking money out of FSI's and 7 out of television and putting it into targeted 8 direct mail. That was just emerging.</p> <p>9 Q. So let me stop you there. I think you just 10 said that at the time the company was sold, most 11 customers in America already had a loyalty card for 12 supermarkets?</p> <p>13 A. No, I said it was emerging.</p> <p>14 Q. No, I think you said at the time the 15 company was sold, most of the households in 16 America, which were going to have a --</p> <p>17 A. Were going to have.</p> <p>18 Q. I see, so it wasn't that they had then; it 19 was they were going to have?</p> <p>20 A. Going to have. And in fact, today, 21 85 percent of households have cards.</p> <p>22 Q. In 1999, how many had it?</p> <p>23 A. I think the penetration rate in 1999 was 24 somewhere around 40 to 50 percent of the</p>	<p>1 Q. Yeah.</p> <p>2 A. -- called on retailers, and the 3 manufacturing sales force called on manufacturers. 4 We needed to access the manufacturing sales force.</p> <p>5 Q. You didn't want to -- you didn't care about 6 the retail sales force?</p> <p>7 A. We did, but we had great retailer 8 relationships.</p> <p>9 Q. So you didn't care about them; you really 10 just cared about the manufacturers from the 11 standpoint of utilizing NAM personnel? Is that 12 what you're saying?</p> <p>13 MR. RICH: Objection.</p> <p>14 A. No, that's not what I said. We cared about 15 both, but in driving to 50 million, you needed the 16 hundred to 250 manufacturing salespeople to call on 17 them. If you notice this, it talks about retailer 18 driven programs were missing. That's my 19 handwriting. It says okay, if you're going to go 20 talk to these people, like Ed Wogan and Steve 21 Marquis, who by the way left immediately, so he 22 wasn't even there, you have to also talk about 23 retailer driven programs.</p> <p>24 Q. But this memorandum shows, does it not,</p>
<p style="text-align: right;">Page 183</p> <p>1 supermarkets were issuing cards, were issuing 2 cards, and then it went up to a much higher -- like 3 80 to 90 percent of the supermarkets were issuing 4 cards and those cards were getting into the 5 majority of consumer households. So we were at the 6 beginning of the upswing. We were just at the 7 point where the market was moving faster, which is 8 why we wanted to have an alliance with News 9 America.</p> <p>10 Q. Now, let me show you another document, 11 which we'll mark as Exhibit 51.</p> <p>12 (Exhibit 51 marked for identification.)</p> <p>13 Q. And you've seen this document before, 14 right?</p> <p>15 A. Apparently.</p> <p>16 Q. And the -- you'd agree with me that the 17 people who received these -- this memorandum were 18 News America Marketing salespeople around the 19 country?</p> <p>20 A. They were retail salespeople, not 21 manufacturing salespeople. There's a big 22 difference. I'm not sure if you understand --</p> <p>23 Q. No, I do.</p> <p>24 A. -- that the retail sales force --</p>	<p>1 that effort was being made to introduce the CCMI 2 people to the rest of the News America Marketing 3 sales force?</p> <p>4 A. No, that is not the rest -- this 5 organization --</p> <p>6 Q. Well, we'll call -- or at least to the 7 retail operation?</p> <p>8 A. Yes.</p> <p>9 Q. You'll agree with that?</p> <p>10 A. Yes, I will. This memo was a media kit 11 that was for a conference call to introduce the 12 retailer people.</p> <p>13 Q. To you?</p> <p>14 A. To us.</p> <p>15 Q. Now, going back again to Mr. Coughlin's 16 memo and the projections that are attached to it, 17 we'd established that your year one projection for 18 implementation was -- I'm sorry. Your total -- 19 your total revenue for year one was \$8.3 million, 20 and then in year -- in year two, it goes up to 21 \$23 million or \$23.9 million, and then, in year 22 three, according to your projections, your revenue 23 was going to reach \$36 million, which was another 24 50 percent increase from the prior year projection,</p>

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1 right?
 2 **A. Mm-hmm.**
 3 Q. And then in year four, according to your
 4 projections, your revenue was going to go up to
 5 \$46 million, right?
 6 **A. Yes.**
 7 Q. And then finally, in year five, you were
 8 going to have total revenue of \$62 million, right?
 9 **A. According to this chart.**
 10 Q. Yeah, so from year one to year five, you
 11 were going to multiply your gross revenue almost
 12 eight-fold, right?
 13 **A. Yes.**
 14 Q. And if you look at your 1997 -- 1998
 15 revenue of \$3.7 million, your estimate of
 16 \$62 million in revenue five years hence was going
 17 to be an almost 16 times jump in revenue from your
 18 1998 revenue, right?
 19 **A. According to your calculation.**
 20 Q. Well, they weren't mine -- well --
 21 **A. According to your statement just now. I**
 22 **don't know if it's 16. I'd have to multiply it**
 23 **out, but --**
 24 Q. But it's approximately right, correct?

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1 **A. Yes.**
 2 Q. Now, these projections were made in 1999,
 3 right?
 4 **A. Yes.**
 5 Q. And you didn't do any market research
 6 involving interviews of non-client potential
 7 customers before you made these projections, right?
 8 **A. No, you're wrong. We knew exactly which**
 9 **customers had opportunities. We knew the market**
 10 **trend was moving. We knew that retailers had data**
 11 **that manufacturers wanted to access and we knew**
 12 **that we stood and held the data in trust and could**
 13 **execute those programs.**
 14 Q. Okay. You didn't hire an outside expert to
 15 derive your projections, did you?
 16 **A. We did not hire an outside expert.**
 17 Q. You didn't ask anyone who was unconnected
 18 to the transaction if the numbers you were
 19 projecting were reasonable numbers, did you?
 20 **A. We actually did an analysis ourselves based**
 21 **on the number of accounts, the number of**
 22 **manufacturers, the number of programs and estimated**
 23 **revenue per program.**
 24 Q. But you didn't ask anybody outside of your

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1 **-- he spent time. If you're asking me to quantify**
 2 **exactly how many hours, days, et cetera, I can't**
 3 **answer that.**
 4 Q. Did you pay him anything for his efforts?
 5 **A. No.**
 6 Q. Did he produce anything in writing
 7 reflecting his view?
 8 **A. I don't know.**
 9 Q. You don't remember it?
 10 **A. If he produced specific documents in**
 11 **writing, I do not recall.**
 12 Q. What specifically did you ask Mr. Sims to
 13 do?
 14 **A. To take a look at our projections.**
 15 Q. And again, what do you remember Mr. Sims
 16 saying to you after he looked at your projections?
 17 **A. He thought they were reasonable based on**
 18 **the market trends.**
 19 Q. And did he have experience in your
 20 industry?
 21 **A. Yes.**
 22 Q. And what did his experience consist of?
 23 **A. I don't remember.**
 24 Q. And did anybody besides Mr. Sims take a

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	Page 190		Page 192
1	look at these projections --	1	Q. No, we'll look at the same chart.
2	A. Not that I recall.	2	A. The 3.2 is on the other chart.
3	Q. -- outside your company?	3	Q. Okay, but you -- on the chart on page FR
4	A. Not that I recall.	4	2675, it goes up from 2.3 million in 1998 to 3.4 in
5	Q. Now, in 2001, the dot com bubble burst?	5	the first year after the acquisition, right?
6	You'd agree with that?	6	A. Yes. Yes.
7	A. I don't know if that was the year it burst.	7	Q. Okay. And what does it go up to in the
8	Q. But it burst in and around that time	8	second year for implementation?
9	period? Maybe it was 2000, maybe it was --	9	A. Eight.
10	A. What is the definition of the dot com	10	Q. And what does it go up to in the third year
11	bubble burst?	11	for implementation?
12	Q. Well, let's just say in 2001, the economy	12	A. Nine.
13	started to go in recession. Would you agree with	13	Q. And what does it go up to in the fourth
14	that statement?	14	year for implementation?
15	A. If that's in the public domain, I guess I	15	A. 11.
16	would agree.	16	Q. And in the fifth year?
17	Q. Okay. And after 9/11, the economy slipped	17	A. 13.
18	some, too, did it not? Do you remember?	18	Q. And if we can take a look at page 26, FR
19	A. I don't know if the total GNP slipped after	19	2678, this page demonstrates, does it not, that you
20	9/11 or not.	20	expected that you would acquire 6.5 new grocery
21	Q. Well, the stock market slipped? You agree	21	stores or other retail clients in year one, right?
22	with that, right?	22	A. Yes.
23	A. You know, I don't know for sure.	23	Q. And then you were going to acquire 11 new
24	Q. Okay.	24	clients in year two, right?
	Page 191		Page 193
1	A. I don't know.	1	A. Yes.
2	Q. All right. When you were making your	2	Q. 14 in year three, right?
3	projections in 1999, you were making many	3	A. Yes.
4	assumptions, right?	4	Q. And then 16 new grocery store or other
5	A. We had a list of assumptions.	5	retail clients in year four, right?
6	Q. Okay, so let's talk about some of them.	6	A. We said new clients. We did not specify
7	With respect to the implementation revenue, again,	7	grocery.
8	keeping our eye on Mr. Coughlin's chart, you	8	Q. Okay, could be grocery or other retail?
9	assumed that implementation revenue was going to go	9	A. Drugs, right.
10	up from 2.3 million in 1998 to 3.2 million in the	10	Q. And then you were going to have 18 new
11	first year after the acquisition, right?	11	grocery store or other retail clients in year five,
12	A. Yes.	12	right?
13	Q. And 5.7 million in the second year, right;	13	A. Correct.
14	7.6 million in the third, 9.5 million in the	14	Q. And this was all guesswork, was it not?
15	fourth? Well, I'm going to have to go back and get	15	MR. RICH: Objection.
16	you to answer yes. Let's start over again: You	16	A. No, we actually had a list of targeted
17	assume that the implementation revenue was going to	17	accounts that we were going after.
18	go up from 2.3 million in 1998 to 3.2 million in	18	Q. (BY MR. KATZ) But you didn't know you were
19	the first year after the acquisition, right?	19	going to get any of them, right?
20	A. This chart says 3.4, so are we looking at	20	A. We had reason to believe that we would get
21	the same chart?	21	them.
22	Q. Well, I'll stand corrected. 3.4.	22	Q. You obviously don't get every client you
23	A. Are you looking at another chart? You're	23	seek, right?
24	looking --	24	A. You don't get every client you seek, but

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1 **just because there were six clients here doesn't
2 mean we were only calling on six. We probably were
3 calling on 20.**

4 Q. Could have, okay, but it was all guesswork
5 as to how many would actually sign up with you,
6 right?

7 **A. I'm not sure I would use the word
8 guesswork. I think we would say that we would
9 assign a probability to each opportunity as it
10 presented itself.**

11 Q. But you didn't know who those customers
12 were going to be, particularly for the years down
13 the road like years three, four and five, right?

14 **A. We had indications of categories of
15 customers. Did we actually specify which
16 customers? I do not recall.**

17 Q. Okay. You didn't ask any independent
18 consultant for his view of the reasonableness of
19 these numbers, did you?

20 **A. No, we were experts in the industry. We
21 knew exactly what was going on.**

22 Q. So you relied on your own independent
23 judgement as to whether or not these numbers
24 regarding new clients in the grocery and other

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1 Q. But you didn't get everything for Kroger?
2 **A. No, we did not get everything, but you're
3 asking about implementation.**

4 Q. Right. Anyway, we'll get to Kroger later
5 on in today's discussion, but you couldn't have
6 predicted what you were going to get from Kroger in
7 the summer of 1999, right?

8 **A. I wasn't that clairvoyant.**

9 Q. In the summer of 1999 when you were doing
10 these projections, you did not have a contract with
11 a single one that projected grocery store or other
12 retail customers that you hoped for to do a new
13 loyalty card program?

14 **A. I cannot testify to that. I don't know who
15 I had contracts with, whether there were contracts
16 pending that just hadn't been signed, where there
17 were presentations and we were waiting for
18 approval. I do not recall.**

19 Q. But certainly, none of the new customers
20 that you anticipated in year two, three, four and
21 five had contracts with you in the summer of 1999,
22 right?

23 **A. I don't know.**

24 Q. You think some of them might?

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1 retail chains were concerned, right?

2 **A. We had relationships with the Food
3 Marketing Institute, the National Association of
4 Chain Drug, and other industry organizations that
5 tracked the acceptance of loyalty in their trade
6 classes and we had access to all that data and the
7 trends within each of those trade channels.**

8 Q. Right, but you didn't have ask anybody from
9 any of those organizations to review your
10 projections on FR 2678 to see if they were
11 reasonable, right?

12 **A. No, we did not.**

13 Q. And you had a total of almost 60 new retail
14 loyalty card programs that you were going to have
15 to roll out in order to meet your projections;
16 isn't that right?

17 **A. Or a combination of larger chains who did
18 more than a million dollars over a hundred stores.
19 Kroger has 4,000 stores. You could have made that
20 number with just doing absolutely everything for
21 Kroger.**

22 Q. Right, but that never happened?

23 **A. We actually executed the Kroger card
24 program.**

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1 **A. I don't know.**

2 Q. You can't remember as you sit here now?

3 **A. I don't know.**

4 Q. As for database management, in 1999, your
5 revenue had been \$1.2 million. Now, you projected
6 -- and I mean CCM -- that revenue was going to go
7 up for database management to \$1.3 million in year
8 one, right? And I'm on seven -- FR 2675.

9 **A. I'm sorry. Would you ask your question
10 again?**

11 Q. Okay. As for database management, in 1999,
12 your revenue had been -- I'm sorry; for database
13 management, in 1998, your revenue had been
14 \$1.2 million. You, being CCM, projected that
15 revenue was going to go up to \$1.3 million in year
16 one after the acquisition for database management,
17 right?

18 **A. Yes.**

19 Q. And for two, you projected that it was
20 going to go up to \$4.1 million, right?

21 **A. Yes.**

22 Q. And for year three, you projected that it
23 was going to go up to \$7.5 million, right?

24 **A. Mm-hmm.**

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<p>1 Q. And for year four, you projected that it 2 was going to go up to \$11.4 million, right? 3 A. Yes. 4 Q. And then for year five, you projected that 5 it was going to go up to \$15.6 million, right? 6 A. Yes. 7 Q. And what research, if any, had you done to 8 determine whether these numbers were anything but 9 mere hopes and aspirations? 10 A. First of all, retailers who chose to 11 implement loyalty programs did need database 12 management services to capture the information that 13 they needed in a usable format, so there was no 14 hope or aspiration that they would use database 15 management services. It was a fact if they wanted 16 to be in the loyalty card business. 17 Second of all, we had a tool that we 18 had built that had been accepted by the people 19 using it and we believed that as more and more 20 retailers embraced loyalty marketing, they would 21 embrace having more database management tools. The 22 database tool could be run as a software licensed 23 or as an ASP model, and we knew that there would be 24 other kinds of database management capabilities</p>	Page 198	Page 200
<p>1 required as we expanded the business, and 2 therefore, it was not a stagnant I have Product A 3 and Product A is the only thing I'm going to sell 4 over five years at a set price; it was a growth in 5 the consumption of the products we currently sold 6 plus additional products we believed we would sell 7 to additional retailers as they embraced loyalty 8 marketing. 9 Q. But you really didn't know how these 10 numbers were going to be met? You didn't know what 11 products you were going to be selling? 12 A. We knew exactly what products we would be 13 selling in year two and three and we knew what 14 product enhancements we would be building going 15 forward. 16 Q. Well, tell me what those were, please. 17 A. We created campaign management tool, a 18 promotional testing tool. We went into the stored 19 value database business, expanding stored value 20 capability. We knew that we would be linking 21 stored value cards to loyalty cards and that was a 22 capability. We knew that we would be porting to 23 the Internet. So we knew that there was a sequence 24 of database marketing cap-- database management</p>	Page 199	Page 201

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1 **fact, Catalina, Valassis, and other companies**
 2 **achieved those numbers while we stagnated and they**
 3 **took our business apart. Competitors who came into**
 4 **the business after we had already been established**
 5 **and needed to build on it actually achieved more**
 6 **than those numbers. So while you may sit here and**
 7 **look at this permutation as something that's not**
 8 **achievable, other companies who made a focused**
 9 **effort using manufacturing sales forces did**
 10 **accomplish those objectives.**

11 Q. And you've seen their financial statements?

12 **A. They are public record.**

13 Q. Whose financial statements are public
14 record?

15 **A. Catalina and Valassis are public record.**

16 Q. Are they public companies?

17 **A. Yes.**

18 Q. Both of them are public companies?

19 **A. Yes. Catalina may be private, but they**
20 **reported their growth.**

21 Q. Where was it reported?

22 **A. In the trade press.**

23 Q. Now, prior to the acquisition, what size
24 sales force did you have --

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1 **the entire ACT media sales force and they had the**
 2 **entire News America sales force. I think they then**
 3 **went down to about 150 people.**

4 Q. But you wanted the entirety of that 240
5 sales force, or 150 sales force, whatever it was,
6 to be spending about 15 percent of their time doing
7 work for CCMI? Is that what you expected?

8 **A. I had an expectation level that their sales**
 9 **force would carry our information when they talked**
 10 **to their customer base to make them aware that we**
 11 **could do targeted marketing programs using retailer**
 12 **databases. In the course of a sales presentation,**
 13 **which may take an hour, they might take 15 minutes**
 14 **and remind them that they have this new capability**
 15 **that they could use.**

16 Q. And you knew that or believed that that was
17 possible and it's what you expected to occur prior
18 to your signing the acquisition agreement in August
19 of 1999?

20 **A. That is correct, because if you look at the**
 21 **financials that David and I -- David DeVoe and I**
 22 **agreed upon, there are no -- there is one or two**
 23 **people in the manufacturing sales force for CCMI**
 24 **direct reports. The rest of the sales force to**

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1 **A. Excuse me. And News America had access to**
 2 **information about the companies, so I'm sure if you**
 3 **ask them, they would give you the information**
 4 **regarding that, the competitive analysis, because**
 5 **they told -- they reported that they had access to**
 6 **competitors information.**

7 Q. Now, prior to the acquisition, what size
8 sales force did you believe you needed in order to
9 meet the post acquisition projections you'd set for
10 CCMI?

11 **A. We needed access to their entire**
 12 **manufacturing sales force. We wanted everyone in**
 13 **the manufacturing sales force to carry information**
 14 **about executing targeted marketing programs for**
 15 **CCMI.**

16 Q. And how much of their time do you think you
17 needed them to spend in order for you to meet your
18 objectives?

19 **A. I would say that they needed to spend**
 20 **15 percent of their time.**

21 Q. And how many -- how many individuals are we
22 talking about?

23 **A. They had 240 at the time that we sold the**
 24 **business, as far as I recollect, because they had**

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1 **sell our product line were all existing News**
 2 **America people, and that's why David DeVoe and I**
 3 **agreed that we would add no head count, significant**
 4 **head count to our direct head count because we**
 5 **would be leveraging the asset of NAM, which was**
 6 **their sales force.**

7 Q. But you put nothing in the agreement
8 requiring that NAM's sales force spend
9 approximately 15 percent of their time selling CCMI
10 products, right?

11 **A. No, we said that it was their intention,**
 12 **their intention to use their sales force. I didn't**
 13 **feel I had to require them a certain set of time.**
 14 **We're talking about business reasonableness. These**
 15 **are people who are experts at calling on every**
 16 **packaged goods company in America. They are**
 17 **professional salespeople. It is a sales driven**
 18 **company, so it would be our expectation that they**
 19 **would be aware of our -- their product, and it was**
 20 **stated in the agreement it was their intention to**
 21 **use their sales force to represent our product**
 22 **line, their intention. You have to assume it's a**
 23 **good intention, not a bad intention. Otherwise,**
 24 **there's a bad intention permeating in the document.**

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<p style="text-align: right;">Page 206</p> <p>1 Q. We're going to change topics. Let's now 2 talk about the earn-out calculations. In year one, 3 you received on November tenth, 2000, a letter from 4 Mr. DeVoe telling you what your earn-out 5 calculation for the first year was, correct? 6 A. I don't know if that was the date. 7 (Exhibit 52 marked for identification.) 8 Q. So you'd agree with me you received your 9 letter regarding your first year earn-out on 10 November 10th, 2000? 11 A. That is the letter. 12 Q. And then you and Mr. Fireman sent a letter 13 on November 20th, 2000 to Mr. DeVoe requesting 14 additional information? 15 (Exhibit 53 marked for identification.) 16 A. Yes. 17 Q. And then on December 13th, 2000, you and 18 Mr. Fireman sent another letter to Mr. DeVoe? 19 We'll mark that as our exhibit next in order. 20 (Exhibit 54 marked for identification.) 21 Q. In your December 13th letter, you say on 22 page two, NAM acquired our stock in CCFI by 23 representing that it would provide sufficient 24 financial sales and marketing support to allow us</p>	<p>1 on December 13th, 2000, which is titled notice of 2 dispute over earn-out and bonus amounts in the 3 first earn-out period -- 4 A. Mm-hmm. 5 Q. -- begins by saying pursuant to Sections 6 2.3C and 7.7 of the Stock Purchase Agreement, we 7 give notice that we dispute the amount paid as the 8 first year bonus amount under Section 2.3 of the 9 agreement. We object on three bases, and the 10 second bases is the bases that I just quoted? 11 A. Yes, that's right. 12 Q. And that's the same bases that you are 13 asserting in the context of this litigation for 14 more money under your earn-out and payment of the 15 bonus? 16 A. I'm not asserting anything. I'm stating 17 the fact that I believe they made a commitment and 18 that they did not in good faith deal with us. 19 Q. Okay, but I'm going to have to go back and 20 ask you to answer my question, that your second 21 objection in your December 13th, 2000 letter -- 22 A. Yes, says that they reneged on the 23 commitment that undertook the actions that made it 24 possible for us to earn this gross margins.</p>
<p style="text-align: right;">Page 207</p> <p>1 to manage CCFI in the implementation of its 2 business plan. It reneged on that commitment and 3 undertook actions that made it impossible for us to 4 earn a gross margin sufficient to trigger NAM's 5 obligation to pay the first year bonus amount. Do 6 you see that? Am I right on that? Did I read that 7 correctly? 8 A. I'm sorry. You're at the bottom of page 9 two? 10 Q. No, I'm in the middle paragraph. 11 A. Okay, yes. I see that paragraph. 12 Q. Okay. And this is the same claim you make 13 in your complaint in this action; is that not 14 correct? 15 A. It is fundamental complaint -- it is a 16 fundamental complaint we are making. 17 Q. Right, but in December 2000, you are making 18 your present claim in the context of the earn-out 19 dispute procedure spelled out in the stock 20 acquisition agreement; isn't that right? 21 MR. RICH: Objection. 22 A. I'm sorry. Would you ask the question 23 again? 24 Q. (BY MR. KATZ) Your letter, which you sent</p>	<p>1 Q. Right, and that's the same claim that 2 you're making in this litigation, right? 3 A. Yes. 4 Q. And then, on January 2, 2001, you received 5 a letter from Mike Racano, R-A-C-A-N-O, of News 6 America Marketing, responding to your letter. And 7 we'll mark that as exhibit next in order, and that 8 is Exhibit 55. 9 (Exhibit 55 marked for identification.) 10 Q. And in the January 2, 2001 letter, 11 Mr. Racano says, among other things, we believe 12 your second objection is entirely without merit, 13 right? That's what he said? 14 A. That's what the letter says. 15 Q. Okay. 16 (Exhibit 56 marked for identification.) 17 Q. You have Exhibit 56 in front of you, right? 18 A. Yes. 19 Q. And that's Mr. Racano's e-mail to you on 20 Friday, February 16th, 2001, right? 21 A. Yes. 22 Q. And in the e-mail, it's reflected that 23 you've had discussions regarding issues concerning 24 your earn-out, right?</p>

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1 A. That is correct. 2 Q. And as of that date, there were two 3 remaining unresolved issues, right?	Page 210	1 Q. (BY MR. KATZ) You don't have any doubt 2 that you received approximately \$106,000 as your 3 earn-out for year one?	Page 212
4 A. Yes, according to this memo. 5 Q. And in the memo, or the e-mail, Mr. Racano 6 says we must submit the unresolved issues to Arthur 7 Andersen and the seller's accountant so that the 8 two accounting firms can attempt to resolve in good 9 faith the two remaining unresolved matters, right?		4 A. No. 5 Q. And that Mr. Fireman received approximately 6 \$159,000 for his earn-out for year one, right?	
10 A. That's what the memo says. 11 Q. And you did not engage an accountant -- 12 A. Not that I --		7 A. No. 8 Q. Now, in year two, you were told at some 9 point in late 2001 that NAM calculated your second 10 year earn-out at about \$71,000 for you and \$106,000 11 for Mr. Fireman? Does that ring a bell?	
13 Q. -- to deal with the unresolved issues, 14 right? 15 A. Not that I recall. 16 Q. Okay. And Mr. Fireman, on March eighth, 17 2001, sent an e-mail that said let this e-mail 18 confirm that Ann and I have chosen not to arbitrate 19 whether the calculations that NAM has made are in 20 compliance with GAAP pursuant to paragraph 2.2B of 21 the Stock Purchase Agreement.		12 A. The specifics do not ring a bell, but the 13 chart shows that number. 14 Q. Okay. And on Monday, November 19th, 2001, 15 that amount was transmitted into your account by 16 News America Marketing, right?	
22 A. If you tell me that memo exists, I believe 23 that memo exists. 24 Q. Is that consistent with your recollection?		17 A. If you have the documentation, I believe 18 that's so. 19 Q. Okay. Now, you engaged in numerous 20 discussions with George Ludwig, controller at NAM, 21 and others at NAM in the first half of 2002 with 22 respect to various aspects of your year two 23 earn-out calculation; isn't that right?	
		24 A. That is correct.	Page 211
1 A. I do not recall that. 2 Q. Let's mark as Exhibit 57 -- 3 (Exhibit 57 marked for identification.) 4 Q. Okay. We have Exhibit 57 in front of you, 5 and this is where Mr. Fireman says on March 8th, 6 2001 that Ann and I have chosen not to arbitrate. 7 Do you see that?		1 Q. And some of these discussions were 2 conducted by Mr. Coughlin on your behalf? 3 A. That is correct. 4 Q. Now, he was by then a News America 5 Marketing employee, right?	Page 213
8 A. Yes. 9 Q. And then Mr. Fireman goes on to say please 10 wire the funds to our respective accounts? Do you 11 see where he says that?		6 A. He was always a News America Marketing 7 employee. From the day we sold the company, he was 8 a News America Marketing employee. 9 Q. Right. Did you pay him for acting on your 10 behalf in this situation?	
12 A. I do. 13 Q. And those are the earn-out funds, right? 14 A. Yes. 15 Q. And you received approximately \$106,000 in 16 your first year earn-out payment?		11 A. No. 12 Q. Was he acting on your behalf in this 13 situation on company time? 14 A. He was acting on our behalf on personal and 15 company time. 16 Q. But you didn't pay him for his efforts --	
17 A. I don't know. You have a chart. 18 Q. Could we have the chart? 19 MR. RICH: Is this something you 20 already marked?		17 A. No, I did not. 18 Q. -- in assisting you? On Friday, May 17th, 19 2002, seven years ago from today, Mr. Racano sent 20 you an e-mail saying Ann, this note confirms that 21 we have agreed that there will be no adjustments to 22 the calculation of the SmartSource Direct earn-out 23 calculations for the year ending September 30th, 24 2001. Do you remember receiving that?	
21 MR. KATZ: Yes, I think we premarked 22 it. 23 MR. RICH: Oh. Exhibit 46? 24 MR. KATZ: Yes.			

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<p>1 A. No, I don't remember that specific memo.</p> <p>2 Q. But do you remember receiving news to that</p> <p>3 effect?</p> <p>4 A. There was a tremendous amount of</p> <p>5 discussion, dialog, documents produced, multiple</p> <p>6 people involved and issues regarding every year of</p> <p>7 the earn-out calculation, and if you have an e-mail</p> <p>8 that says that Mike Racano said something, then I</p> <p>9 believe that he said it.</p> <p>10 (Exhibit 58 marked for identification.)</p> <p>11 Q. And this is the Friday, May 17th, 2002</p> <p>12 e-mail?</p> <p>13 A. I see that.</p> <p>14 Q. Okay. Now, at this point in time, you had</p> <p>15 already been paid your earn-out, right? You had</p> <p>16 already received your year two earn-out?</p> <p>17 A. I don't know the date that we received the</p> <p>18 earn-outs. It says the period, but I don't know</p> <p>19 the date that you received the earn-out, so I can't</p> <p>20 answer that. It doesn't tell me the date I</p> <p>21 received it. It just -- it's the date of the</p> <p>22 period. It doesn't tell me the date the checks</p> <p>23 were sent.</p> <p>24 Q. Well, didn't you receive your earn-out for</p>	<p>Page 214</p> <p>1 lot of dialog and a lot of papers that had to be</p> <p>2 assembled after the actual date that the year</p> <p>3 closed.</p> <p>4 Q. But suffice it to say you never designated</p> <p>5 an accountant to deal with unresolved issues on</p> <p>6 your behalf?</p> <p>7 A. We worked on unresolved issues, Bob and I</p> <p>8 and Robert Coughlin and Mike Gaffney and George</p> <p>9 Ludwig and Mike Racano and other people in their</p> <p>10 organization trying to get facts so we could stay</p> <p>11 fact-based about what happened.</p> <p>12 Q. And they dealt with you in good faith</p> <p>13 during all this, right?</p> <p>14 MR. RICH: Objection.</p> <p>15 A. I don't know whether they dealt with me in</p> <p>16 good faith. They dealt with me when I pushed the</p> <p>17 answer. If it really was good faith, then why was</p> <p>18 I even having this problem? They didn't provide</p> <p>19 any finan-- there was a guy named Chris Bruther who</p> <p>20 was assigned to us who actually left the company</p> <p>21 who spent almost all of his time trying to</p> <p>22 reconstruct basic financial accounting for us that</p> <p>23 the company never provided because we were so small</p> <p>24 relative to the billion dollars. So was it good</p>	<p>Page 216</p>
<p>1 year two in November of 2001? That would be</p> <p>2 approximately two years after the transaction?</p> <p>3 A. You know, I don't know when we received the</p> <p>4 earn-outs, the dollar -- I don't know the dates</p> <p>5 that we received the earn-out dollars. We received</p> <p>6 earn-out dollars at the conclusion of the period,</p> <p>7 but I don't know the dates that we received the</p> <p>8 dollars.</p> <p>9 Q. Okay. Now, the dispute resolution</p> <p>10 deadlines in the agreement for challenging the</p> <p>11 second year earn-out calculation had long passed by</p> <p>12 May 17th, 2002, right?</p> <p>13 A. The second year would have closed in</p> <p>14 September 2001, but there were many questions about</p> <p>15 the accounts receivable, the accounts payable, the</p> <p>16 accounting altogether. There were no -- there</p> <p>17 wasn't documentation on their part. They had very</p> <p>18 poor records. We had to reconstruct records, so it</p> <p>19 took months of going through accounts receivable,</p> <p>20 finding where all the things were, mistakes that</p> <p>21 had been made by NAM's manufacturing side that cost</p> <p>22 us credits in the customers' accounts that were</p> <p>23 totally beyond our control, there were errors made</p> <p>24 by NAM people outside of our group, so there was a</p>	<p>Page 215</p> <p>1 faith? I don't know that it was good faith. It</p> <p>2 was in fact a lack of performance on their part.</p> <p>3 Q. Well, you say you were so small relative to</p> <p>4 the billion dollars. What do you mean by that?</p> <p>5 A. Meaning we did millions of dollars in</p> <p>6 business and they were a billion dollar concern,</p> <p>7 and they didn't allocate -- they had a freeze in</p> <p>8 head count, so they didn't allocate a dedicated</p> <p>9 financial resource to us to help us. Robert</p> <p>10 Coughlin was actually doing two jobs instead of one</p> <p>11 for months on end when they were supposed to have</p> <p>12 someone, and finally, after we said this is</p> <p>13 ridiculous; you don't even have ledgers showing us</p> <p>14 what's going on in the business, we ask for</p> <p>15 reports; we can't even find them, and so they</p> <p>16 assigned a gentleman by the name of Chris Bruther</p> <p>17 to help us reconstruct. It took him months to</p> <p>18 reconstruct the finances of the accounting within</p> <p>19 News America. It was difficult to find out what</p> <p>20 was going on. We did not get regular reports every</p> <p>21 month on what happened in the finances of the</p> <p>22 business. And so when you ask whether it was in</p> <p>23 good faith, I don't know the answer to that</p> <p>24 question. I know that we pushed to get the facts</p>	<p>Page 217</p>

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<p>1 and that after pushing constantly and going through 2 every detail did we secure the facts. 3 Q. And you did secure the facts? 4 A. We secured the facts to the best of our 5 knowledge; that is correct. 6 Q. And you ultimately discontinued any further 7 investigation once you felt comfortable that you 8 had gotten as much of the facts as you could? 9 A. That is correct. 10 Q. Okay. And you never brought a lawsuit 11 against NAM for your claim of inadequate support 12 during the second year of your earn-out period, 13 right? 14 A. We -- this is the lawsuit that we are 15 bringing against NAM right now. 16 Q. You didn't do so before? 17 A. No. 18 Q. You didn't do so at any time while you were 19 still employed by News America Marketing, right? 20 A. No. 21 Q. And you did not exercise the arbitration 22 provisions of your agreement at any time to 23 challenge your earn-outs or the bonus in the Stock 24 Purchase Agreement, right?</p>	<p>Page 218</p> <p>1 Then on July 19, 2002, Deborah Wolfe at Hogan & 2 Hartson responded to your July 15th, 2002 letter, 3 right? 4 A. Yes. 5 Q. And she said that your claims were both 6 untimely and without merit, right? 7 A. She made those statements. 8 Q. You did not respond to her, did you? 9 A. I don't recall. 10 Q. Mr. Fireman did not respond to her, did he? 11 A. I don't recall. 12 Q. Your counsel did not respond to her, did 13 he? 14 A. I don't recall. 15 Q. You did not commence arbitration? 16 A. I do not believe we commenced arbitration. 17 Q. And you did not bring suit, right? 18 A. I did not bring suit. 19 Q. Nor did Mr. Fireman? 20 A. No. I do not know. 21 Q. And neither you nor Mr. Fireman returned 22 any money that NAM had paid you, correct? 23 A. I did not. 24 Q. And you did not ask for rescission of the</p>
<p>1 A. No, we did not use arbitration. 2 (Exhibit 59 marked for identification.) 3 Q. You remember the July 15th, 2002 letter 4 that you sent to John Linguiti? 5 A. I don't recall the letter, but the letter 6 is clearly what we wrote. 7 Q. You wrote it or Mr. Fireman wrote it? 8 A. We wrote it together. 9 Q. Okay. You certainly signed it? 10 A. Yes, I did. 11 Q. And this is July 15th, 2002, right? 12 A. It's dated that. 13 Q. And you are claiming that you dispute the 14 amount paid as your year two earn-out and you make 15 the same claim that you did in your December 13th, 16 2000 letter -- December 13th, 2000 letter? Isn't 17 that right? 18 A. I would need to see the letter to do the 19 comparison. 20 Q. Okay. We have it here. 21 (Exhibit 60 marked for identification.) 22 A. Yes, we make the same complaints. 23 Q. And then on July 15th, 2002, you and 24 Mr. Fireman wrote another letter -- oh, I'm sorry.</p>	<p>Page 219</p> <p>1 Stock Purchase Agreement, did you? 2 A. I don't -- I don't believe so. 3 Q. During the next three years, neither you 4 nor Mr. Fireman attempted to convince NAM to raise 5 your earn-out amounts for years three, four, five 6 by making the argument that NAM had failed to 7 provide sufficient financial marketing or sales 8 support, did you? 9 MR. RICH: Objection. 10 A. We constantly raised the issue of the 11 concerns we had with the demise of the business. 12 They had in years two, three, four and five 13 destroyed the -- the database portion of the 14 business with lack of support and accuracy that 15 cost us customers. They took our staff that was 16 trained and had them leave and replaced them with 17 people in Connecticut who had no experience. They 18 never gave us access to the sales force. We 19 constantly raised the questions with people. We 20 had several people who we reported to. I reported 21 to four or five people during the time that I was 22 at NAM that were not even executives in some cases, 23 so we raised it every chance we got to raise the 24 concerns with various people in the organization.</p>

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<p>1 Q. (BY MR. KATZ) But you didn't make the 2 objection during your discussions with NAM 3 financial people during the earn-out calculation 4 discussions?</p> <p>5 A. We had serious discussions with the NAM 6 calculation people, people who were participating 7 at the closing, people who worked with us after the 8 closing, people who worked with us during the first 9 couple of years, people who were working with us, 10 then had left the company or were not involved or 11 were transferred to other divisions, so from their 12 perspective, we raised the issues and concerns with 13 absolutely every financial group that we worked 14 with.</p> <p>15 Q. Okay. Let's turn to year three. This year 16 earn-out year ended on 9/30/2002, right?</p> <p>17 A. Yes, that would have been year three.</p> <p>18 Q. And your earn-out was calculated to be 19 \$45,227?</p> <p>20 A. If that's the chart. If that's on the 21 chart, then that's what it is. In year three, the 22 number I have is 55,000.</p> <p>23 Q. Right. And that's because after some 24 discussion, NAM adjusted your account -- adjusted</p>	Page 222	<p>1 tell you how much you and Mr. Fireman received?</p> <p>2 A. The chart states amounts of money that we 3 received.</p> <p>4 Q. And how much was that?</p> <p>5 A. Mr. Fireman received 70 -- almost \$77,000 6 and I received 51.</p> <p>7 Q. Now, on November 22, 2004, you received a 8 copy of an e-mail which Mr. Fireman had sent to 9 Mr. Coughlin? Let's mark that as our exhibit next 10 in order.</p> <p>11 (Exhibit 61 marked for identification.)</p> <p>12 Q. And in the e-mail, Mr. Fireman wrote 13 Robert, talking to Robert Coughlin, we need to 14 respond to NAM this week or lose right to appeal. 15 Have you figured anything? Do you see that?</p> <p>16 A. Bob wrote that to Robert?</p> <p>17 Q. Yes.</p> <p>18 A. Okay.</p> <p>19 Q. And you saw this e-mail, right?</p> <p>20 A. I -- I wrote an e-mail to Don Jack and Bob 21 wrote an e-mail to Robert Coughlin. I see that.</p> <p>22 Q. And did you see Mr. Fireman's e-mail? Have 23 you seen Mr. Fireman's e-mail previous to today?</p> <p>24 A. I don't know. I'm not on copy for the</p>	Page 224
<p>1 your earn-out by \$10,446?</p> <p>2 A. I don't remember the specifics.</p> <p>3 Q. Okay, but these -- the amounts that you and 4 Mr. Fireman received that's reflected on the chart 5 which is Exhibit 46 are accurate, correct?</p> <p>6 A. I believe so.</p> <p>7 Q. Okay. And then year four, that year ended 8 -- that earn-out year ended 9/30/03, right?</p> <p>9 A. Yes.</p> <p>10 Q. And what were your and Mr. Fireman's 11 earn-out amounts?</p> <p>12 A. Year four?</p> <p>13 Q. Year four.</p> <p>14 A. Mr. Fireman received \$37,000 and I received 15 24.</p> <p>16 Q. Okay. Now, on year five -- let me see if I 17 have the documents -- at some time in November of 18 2004, Mr. Jack from News America Marketing sent you 19 a memo with a calculation for the year five 20 earn-out and informing you that it was going to be 21 wired. Does that sound right to you?</p> <p>22 A. I worked with Don Jack. I don't know the 23 dates.</p> <p>24 Q. Okay. And looking at the chart, does that</p>	Page 223	<p>1 e-mail, so I would have no idea whether I received 2 it or didn't receive it, and he had already left 3 the company.</p> <p>4 Q. Mr. Coughlin had or Mr. Fireman had, or 5 both?</p> <p>6 A. Mr. Fireman certainly had, and based on the 7 e-mail, they both had left the company.</p> <p>8 Q. They both had? And you don't remember 9 whether or not you were sent a copy of the e-mail 10 or not?</p> <p>11 A. I do not recall.</p> <p>12 Q. What did you understand -- what do you 13 understand Mr. Fireman to mean by his use of the 14 expression lose right to appeal?</p> <p>15 A. I don't know. I mean, you know, Bob talks 16 in shorthand a lot.</p> <p>17 Q. Let me suggest that you may have received a 18 copy of this e-mail if you note that the e-mail 19 from Mr. Fireman and Mr. Coughlin was on 20 November 22, 2004 at 12:56 and then your e-mail to 21 Mr. Jack is dated November 22, 2004 at 8:13 p.m. 22 MR. RICH: Which is four hours before, 23 right? 24 MR. KATZ: No, I don't think so.</p>	Page 225

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<p>1 A. Well, yeah --</p> <p>2 MR. KATZ: 12:56 p.m. is right after</p> <p>3 noon.</p> <p>4 A. I don't know the answer to that.</p> <p>5 Q. (BY MR. KATZ) Okay.</p> <p>6 A. I can't tell you one way or the another. I</p> <p>7 don't know the answer to that question.</p> <p>8 Q. When we look back at the five years of</p> <p>9 earn-out discussions, you would agree, would you</p> <p>10 not, that your and Mr. Fireman's exchanges about</p> <p>11 your disagreements with NAM's executives were</p> <p>12 always professional?</p> <p>13 A. We were very professional.</p> <p>14 Q. As were the people on NAM's side, too,</p> <p>15 wouldn't you say?</p> <p>16 MR. RICH: Objection.</p> <p>17 A. Well, why don't you give me your definition</p> <p>18 of professional.</p> <p>19 Q. (BY MR. KATZ) Well, let me just ask. They</p> <p>20 were always -- NAM executives were always courteous</p> <p>21 toward you and Mr. Fireman, weren't they?</p> <p>22 A. No.</p> <p>23 Q. They were not?</p> <p>24 A. No.</p>	<p>Page 226</p> <p>1 A. No.</p> <p>2 Q. So you continued to put the complaints in</p> <p>3 e-mails?</p> <p>4 A. Yes.</p> <p>5 Q. Was Mr. Carlucci disrespectful or</p> <p>6 discourteous to you in any other way?</p> <p>7 A. Mr. Carlucci would not honor our requests</p> <p>8 or concerns, so when we would want to have a</p> <p>9 discussion about the business issues or the</p> <p>10 business opportunities, he was not open. In fact,</p> <p>11 he was disrespectful in that he came to our offices</p> <p>12 in Boston and stated that there was no support for</p> <p>13 direct marketing, which was the foundation of our</p> <p>14 business to grow, and that it -- he didn't believe</p> <p>15 there was any future in direct marketing and that</p> <p>16 it was irrelevant, and that was derogatory against</p> <p>17 everything that we were trying to accomplish as a</p> <p>18 division.</p> <p>19 Q. When did he state this?</p> <p>20 A. He came to the Boston offices. You'd have</p> <p>21 to check his schedule when he came for town</p> <p>22 meeting.</p> <p>23 Q. Was it before 9/11 or after 9/11?</p> <p>24 A. I really don't know.</p>
<p>1 Q. Who was not courteous towards you?</p> <p>2 A. Mr. Carlucci was not courteous.</p> <p>3 Q. But he was --</p> <p>4 A. Mr. Ludwig was not courteous.</p> <p>5 Q. Mr. Ludwig was not courteous?</p> <p>6 A. No.</p> <p>7 Q. Could you describe for me why you believe</p> <p>8 they were not courteous?</p> <p>9 A. Mr. Carlucci said there's no room for</p> <p>10 discussion on any topic. It's my company. And he</p> <p>11 was not open to any discussions. And if you put</p> <p>12 anything in an e-mail, you were severely</p> <p>13 reprimanded. He directed us not to put anything in</p> <p>14 an e-mail. He directed us -- specifically said</p> <p>15 that to us. Do not put anything in e-mails. Do</p> <p>16 not put any writ-- anything in writing in e-mails.</p> <p>17 Q. With respect to what?</p> <p>18 A. Anything; any complaint, any issue with the</p> <p>19 business. We were not to put anything in an</p> <p>20 e-mail.</p> <p>21 Q. When did this occur?</p> <p>22 A. It occurred in I would say 2000.</p> <p>23 Q. And did you follow that instruction</p> <p>24 thereafter?</p>	<p>Page 227</p> <p>1 Q. Were you in the Hancock Building or were</p> <p>2 you in Braintree?</p> <p>3 A. I was in the Hancock Building.</p> <p>4 Q. So it was at least after the move to the</p> <p>5 Hancock Building?</p> <p>6 A. Yes, it was.</p> <p>7 Q. Is there anything else about Mr. Carlucci</p> <p>8 that you'd like to report?</p> <p>9 MR. RICH: Objection.</p> <p>10 A. No.</p> <p>11 Q. (BY MR. KATZ) You don't have any other</p> <p>12 examples of Mr. Carlucci being disrespectful toward</p> <p>13 you or your business?</p> <p>14 A. I do not have any recollection -- at the</p> <p>15 moment, I cannot -- I don't have any other specific</p> <p>16 examples to give you.</p> <p>17 Q. Who else was present at the town meeting?</p> <p>18 A. The entire floor.</p> <p>19 Q. Were there any other News America Marketing</p> <p>20 executives besides Mr. Carlucci present?</p> <p>21 A. I don't recall all the people who were in</p> <p>22 the room.</p> <p>23 Q. Was Henri Lellouche there?</p> <p>24 A. I don't recall.</p>

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<p>1 Q. Was Chris Mixson?</p> <p>2 A. I don't recall. I don't recall.</p> <p>3 Q. Did he come up to Boston by himself --</p> <p>4 A. I don't know.</p> <p>5 Q. -- for this meeting?</p> <p>6 A. I don't know.</p> <p>7 Q. You don't remember?</p> <p>8 A. No.</p> <p>9 Q. And I think you told us you don't have any</p> <p>10 recollection of any other examples besides the ones</p> <p>11 you just mentioned regarding Mr. Carlucci and his</p> <p>12 attitude toward you or your business?</p> <p>13 A. At the moment, I can't recall specific --</p> <p>14 other specific examples at the moment.</p> <p>15 Q. And you mentioned Mr. Ludwig as someone who</p> <p>16 --</p> <p>17 A. Right.</p> <p>18 Q. -- you didn't believe was courteous to you?</p> <p>19 A. That is correct.</p> <p>20 Q. And what's your basis for that?</p> <p>21 A. In discussions with Mr. Ludwig where I</p> <p>22 shared with him there were discussion with Mike</p> <p>23 Racano regarding how the earn-out would be</p> <p>24 calculated and issues that we were facing in the</p>	<p>Page 230</p> <p>1 A. That is correct.</p> <p>2 Q. Do you have any -- is there anyone else</p> <p>3 besides Mr. Ludwig or Mr. Carlucci who you think</p> <p>4 wasn't courteous or respectful toward you?</p> <p>5 A. Jon Rubin.</p> <p>6 Q. Anybody besides Mr. Rubin?</p> <p>7 A. At the moment, I don't recall.</p> <p>8 Q. And what was it that Mr. Rubin did or</p> <p>9 didn't do that troubled you?</p> <p>10 A. Mr. Rubin made a claim to Mr. DeVoe that I</p> <p>11 had misrepresented discussions regarding the Duane</p> <p>12 Reade account, and I received a copy of an e-mail</p> <p>13 that he had sent to Dave DeVoe from someone else in</p> <p>14 the company as a warning that this discussion had</p> <p>15 taken place. I then called David DeVoe and</p> <p>16 explained to David DeVoe that if I had something --</p> <p>17 if there was a problem with the Duane Reade account</p> <p>18 or some issue, that I would directly tell David; I</p> <p>19 reported to David at the time and that he would be</p> <p>20 the first to know that. And I believed that Jon</p> <p>21 Rubin's actions were subversive, that he -- his</p> <p>22 intentions were not honorable. And David DeVoe</p> <p>23 told me not to worry about John Rubin; he was</p> <p>24 leaving the company, which he did.</p>
<p>Page 231</p> <p>1 company, he informed me that he was now in charge,</p> <p>2 he didn't care about anybody else, and therefore,</p> <p>3 he was the ultimate financial decision maker and he</p> <p>4 had -- and therefore, anything that I chose to say</p> <p>5 was irrelevant.</p> <p>6 Q. But didn't he compromise on some issues</p> <p>7 that you discussed?</p> <p>8 A. I don't know whether he compromised or his</p> <p>9 staff compromised. I don't know who ultimately</p> <p>10 made those decisions.</p> <p>11 Q. Do you have anything else with respect to</p> <p>12 Mr. Ludwig that supports your view that he wasn't</p> <p>13 always courteous with you?</p> <p>14 A. Mr. Ludwig ran all of the financial</p> <p>15 services for the corporation. We were a part of</p> <p>16 that corporation. We did not have appropriate</p> <p>17 financial staff to support our division in terms of</p> <p>18 tracking and reporting accounts receivable,</p> <p>19 accounts payable, discounts, timeliness.</p> <p>20 Therefore, I would say that he was not respectful</p> <p>21 of helping us drive our business forward.</p> <p>22 Q. Because you felt you didn't get the</p> <p>23 services that you needed from Mr. Ludwig? Is that</p> <p>24 what you're saying?</p>	<p>Page 233</p> <p>1 Jon Rubin came to Braintree and said</p> <p>2 one thing to us and did another. He came to</p> <p>3 Braintree and we shared with him concerns about the</p> <p>4 fact that our staff was underpaid and -- relative</p> <p>5 to comparable salaries in the market and that we</p> <p>6 wanted to talk about appropriate compensation as we</p> <p>7 became part of the News America organization to</p> <p>8 other people. He told us oh, that's not the case,</p> <p>9 and yet within 30 days, they gave \$50,000 more in</p> <p>10 salary to Bill Adam, so he -- he made</p> <p>11 representations to us, to other people in News</p> <p>12 about our inability to run our business effectively</p> <p>13 to cast dispersions on our character, which other</p> <p>14 people reported to us, which was not the case. So</p> <p>15 Jon Rubin had an agenda about wanting to run</p> <p>16 SmartSource Direct as it was, and in the short</p> <p>17 term, he was asked to leave the company.</p> <p>18 Q. How -- over what period of time did Jon</p> <p>19 Rubin have some supervisory responsibility over</p> <p>20 you?</p> <p>21 A. From the time of the acquisition itself for</p> <p>22 about 90 days, and then he left the company and</p> <p>23 Henri Lelouche was put in charge.</p> <p>24 Q. So Jon Rubin's involvement with you was</p>

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<p>1 really for a very brief period of time?</p> <p>2 A. But a very important period of time that 3 set the tone. It was Jon Rubin who stated oh, you 4 can't talk to the rest of the sales force. They're 5 busy with this organizational change. It was Jon 6 Rubin who set the tone and cast dispersions on our 7 character which lasted with some executives over a 8 period of time until we tried to change their 9 opinion about what we were trying to accomplish. <p>10 So in the early stages of our acquisition, Jon</p> <p>11 Rubin said things against us, reported things</p> <p>12 against the business which were not accurate, which</p> <p>13 in fact raised questions about our integrity and</p> <p>14 our performance that hurt us inside the</p> <p>15 organization just at the time of the acquisition,</p> <p>16 so his damage far exceeded the time he spent</p> <p>17 working with us directly.</p> <p>18 Q. But Mr. DeVoe told you don't worry about</p> <p>19 what Mr. Rubin said, right?</p> <p>20 A. That is correct, after the fact, but 21 Mr. Rubin spoke to a lot of people in the company 22 and he talked to the executive committee, so we 23 have no idea the extent of the damage he caused us.</p> <p>24 Q. If any?</p> </p>	Page 234	<p>1 these under oath, right?</p> <p>2 A. I did.</p> <p>3 Q. If you can -- if you could take a look at</p> <p>4 the last page?</p> <p>5 A. 28? Is this the last page?</p> <p>6 Q. Your signature?</p> <p>7 A. Yes.</p> <p>8 Q. You signed these under oath?</p> <p>9 A. I did.</p> <p>10 Q. If we could go to page four, middle of the</p> <p>11 page, it says NAM agreed to provide CCMI with the</p> <p>12 use of its expansive retail and manufacturing sales</p> <p>13 force who was selling their current products and</p> <p>14 expose CCMI to NAM's relationship with worldwide</p> <p>15 affiliates of New Corporation and the Fox</p> <p>16 Entertainment Network, right?</p> <p>17 A. That is correct.</p> <p>18 Q. There's nothing in the Stock Purchase</p> <p>19 Agreement that says this, is there?</p> <p>20 MR. RICH: Objection. Asked and</p> <p>21 answered.</p> <p>22 A. I've answered the question several times.</p> <p>23 Q. (BY MR. KATZ) There's nothing in the Stock</p> <p>24 Purchase Agreement that mentions Fox Entertainment</p>	Page 236
<p>1 A. Oh, he caused us damage.</p> <p>2 Q. What are some of the examples of the</p> <p>3 damage?</p> <p>4 A. He did not let us talk to the rest of the 5 sales force. He said they were busy. That was 6 severe damage to us.</p> <p>7 Q. But after he left --</p> <p>8 A. We still didn't talk to the sales force.</p> <p>9 Q. And why was that?</p> <p>10 A. Because they were busy. I personally went 11 to Chris Mixson and asked for help and he said hey, 12 I'm busy. I'm running this regular sales force, 13 trying to do this consolidation. I don't have time 14 for you.</p> <p>15 Q. And what was wrong with that?</p> <p>16 A. Well, that wasn't the intention of the 17 sale.</p> <p>18 Q. That's your view?</p> <p>19 A. Oh, that is the view as stated. It was the 20 intention of the company to provide sales support, 21 intention. Good intention; otherwise, it was bad 22 intention.</p> <p>23 Q. Let's now take a look at your Answers to</p> <p>24 Interrogatories. This is Exhibit 40. You signed</p>	Page 235	<p>1 Network, is there?</p> <p>2 A. It says in the Stock Purchase Agreement -- 3 I believe it says something about News and its 4 affiliates, I think it says.</p> <p>5 Q. Just so the record is clear, the question</p> <p>6 that is on the table is that there's nothing in the</p> <p>7 Stock Purchase Agreement that mentions Fox</p> <p>8 Entertainment Network, is there?</p> <p>9 A. Mr. DeVoe and I had discussions regarding 10 promotions for Fox Properties and the retail 11 channel. We specifically talked about -- who is 12 the cat? Who is the Fox cat, you know, the cat? 13 Garfield. That we would put together Garfield 14 promotions, so we had discussions regarding using 15 Fox Properties and the retail network for loyalty 16 card programs.</p> <p>17 Q. Nothing in the agreement, right?</p> <p>18 A. I didn't go through it.</p> <p>19 Q. I'm sorry?</p> <p>20 A. I -- I didn't look through the agreement in 21 detail. I would assume. Given your question, I do 22 not know if it's in the agreement.</p> <p>23 Q. Not in the agreement, right?</p> <p>24 A. I don't know. I'd have to go through. You</p>	Page 237

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<p>1 want me to go through again? Mr. Katz, I do not 2 believe that every detail that we talked about 3 regarding opportunities for our business were 4 listed in the agreement, such as the Garfield 5 promotions.</p> <p>6 Q. But you would make every discussion that 7 you had with Mr. DeVoe an obligation on the part of 8 News America Marketing? Isn't that your point?</p> <p>9 MR. RICH: Objection.</p> <p>10 A. My point is that we had the opportunity to 11 make a \$50 million business. He agreed to that 12 opportunity, because he looked at the financials 13 and he accepted them, and it was based on those 14 financials that we entered into the agreement. And 15 in that agreement, it talks about marketing 16 programs and consulting, and marketing programs 17 takes many forms, not the least of which was using 18 NAM properties to create promotions for retailers, 19 and we specifically discussed the Garfield -- 20 what's the word -- Garfield property.</p> <p>21 Q. (BY MR. KATZ) Going back to your 22 interrogatory answers, you also say that NAM 23 represented and agreed that CCMi would continue to 24 operate as an autonomous division of NAM and</p>	<p>Page 238</p> <p>1 Braintree. 2 Q. But will you read paragraph 8.1 of the 3 Stock Purchase Agreement for me? 4 A. This agreement contains and is intended a 5 complete statement of all terms of the arrangements 6 between the parties in respect to the matter and 7 supersedes any previous agreements and 8 understandings. 9 Q. Is there any more? 10 A. No. 11 Q. That's it? Doesn't that clearly tell you 12 that all of the discussions that you had with 13 Mr. DeVoe prior to the signing of the agreement are 14 trumped by the agreement? 15 A. No. No. 16 MR. RICH: Objection. 17 A. In fact, it was an act of good faith that 18 he built the agreement, that we went into business 19 together, that we were going together to build a 20 company together, so did that mean that I -- that 21 anything he said to me before I would think was a 22 lie or that it was not honest or that it -- or that 23 it was not about how to build a company together? 24 I would say that that's not accurate.</p>
<p>1 benefit from its operational and financial support, 2 right?</p> <p>3 A. That is correct.</p> <p>4 Q. There's nothing in the agreement about CCMi 5 operating as an autonomous division, is there?</p> <p>6 A. I don't know the answer to your question. 7 I can tell you that it was never discussed at any 8 time that CCMi would not operate as an independent 9 company. It was implied that we would stay in 10 Braintree; it was implied we would always be in 11 Boston. Everything that they said was we would be 12 operating under -- as CCMi in the discussions we 13 had prior to signing the contract. Their actions, 14 however, from the moment the contract was signed 15 were different.</p> <p>16 Q. But there's nothing in the agreement about 17 CCMi operating as an autonomous division, right?</p> <p>18 A. And there's nothing in the agreement that 19 says it would not.</p> <p>20 Q. Right.</p> <p>21 A. In fact, all discussions, all discussions 22 were that we would; that we had a financial plan, 23 that we had a product line, that we had a plan of 24 action and that we would continue to reside in</p>	<p>Page 239</p> <p>Page 241</p> <p>1 Q. (BY MR. KATZ) But that it's not a basis to 2 build a lawsuit? 3 A. It is a basis for which they intended to 4 grow the business. They made commitments to grow 5 this business by the very nature that they bought 6 this company, they saw the market growing, they 7 were not a part of it until they acquired us, they 8 wanted our assets to help them and help us grow. 9 Q. And they paid you a lot of money for that? 10 A. No, they paid us insignificant money 11 relative to the business opportunity. 12 Q. You think \$2.8 million in cash is 13 insignificant? 14 A. Relative to the business opportunity, yes. 15 Q. The year before you had lost \$170,000. How 16 many years could that continue? 17 MR. RICH: Objection. 18 A. I have no comment regarding that financial 19 statement. 20 Q. (BY MR. KATZ) What would have happened to 21 CCMi if News America Marketing hadn't come along? 22 A. I -- that's speculation, sir, and I don't 23 intend to speculate. 24 Q. Now, going back to the statement in your</p>

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1 interrogatory answers about CCMI being allowed to
 2 continue to operate as an autonomous division, in
 3 fact, CCMI did have some autonomy, didn't it? You
 4 were permitted to remain in the Boston area, right?
 5 **A. Yes. That was -- yes.**
 6 Q. And there was nothing in the Stock Purchase
 7 Agreement that required News America Marketing to
 8 allow you to remain in the Boston area?
 9 **A. It was stated that the company would always**
 10 **reside in Massachusetts, in Boston.**
 11 Q. Where in the agreement is that?
 12 **A. I don't know where. You're going to ask me**
 13 **to go through every page?**
 14 Q. Yes.
 15 **A. The discussion was that the company would**
 16 **always reside in the Boston market.**
 17 Q. But where is that in the agreement?
 18 **A. I don't know, sir, and I will have to go**
 19 **through every page.**
 20 Q. And CCMI did in fact benefit from NAM's
 21 operational and financial support; isn't that
 22 right?
 23 **A. I can't testify to that.**
 24 Q. I mean, NAM did your HR, right? Right?

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1 **A. I am not sure of that statement.**
 2 Q. It wasn't being taken care of by you?
 3 **A. I don't know the answer to your question.**
 4 Q. You think that you were paying for some of
 5 the expenses of CCMI after the acquisition?
 6 **A. I don't know the answer to your question.**
 7 **I don't know.**
 8 Q. You think you might have been paying for
 9 some of the expenses of CCMI post acquisition of
 10 your stock by NAM?
 11 **A. Yes.**
 12 Q. Well, what do you think you might have been
 13 paying for?
 14 **A. I paid for Kevin Tripp's moving expenses.**
 15 Q. You personally did?
 16 **A. Out of CCMI's budget.**
 17 Q. Yeah, but CCMI's budget was being funded by
 18 NAM, right?
 19 **A. CCMI's budget was being funded by the sales**
 20 **that we projected.**
 21 Q. Right, but that was all money that was
 22 going to NAM, right?
 23 **A. Was it money going to NAM?**
 24 Q. It wasn't going to you?

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1 MR. RICH: Objection.
 2 **A. No.**
 3 Q. (BY MR. KATZ) It didn't do your HR?
 4 **A. No.**
 5 Q. It paid for your overhead, right?
 6 **A. I don't know what they paid for.**
 7 Q. They paid for your -- they paid for use of
 8 space at the John Hancock Building?
 9 **A. The use of space at the John Hancock**
 10 **Building was for NAM. The fact that there was five**
 11 **of us sitting there had nothing to do with us. It**
 12 **had to do with the fact that they wanted that space**
 13 **for the NAM business.**
 14 Q. Well, before you were in the John Hancock
 15 Building and you were in Braintree, it paid -- it
 16 paid rent for that space, too, didn't it?
 17 **A. I don't know how that worked, frankly. I**
 18 **don't know how the rent portion of it worked. I**
 19 **don't know what --**
 20 Q. But all of the expenses for the business
 21 that you had been conducting at CCMI were being
 22 taken care of by NAM --
 23 **A. I am not --**
 24 Q. -- after the acquisition?

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1 **A. It wasn't going to Bob and I personally,**
 2 **no.**
 3 Q. You didn't have an entitlement to that
 4 money; you were employees of NAM at that point?
 5 **A. That is correct.**
 6 Q. So it may have been going out of NAM's
 7 budget, but it wasn't going out of monies that were
 8 either yours or Mr. Fireman's, right?
 9 **A. It wasn't coming -- the monies that were**
 10 **operating were not coming out of our direct pocket.**
 11 **That is correct.**
 12 Q. It was coming out of NAM's pocket, right?
 13 **A. It was coming out of SmartSource Direct's**
 14 **pocket.**
 15 Q. And that was part of NAM?
 16 **A. Yes.**
 17 Q. And everything that what had been CCMI was
 18 doing after the acquisition was paid for by NAM,
 19 whether it be paper clips, rent, secretaries,
 20 travel, you name it. It was all paid for by NAM,
 21 right?
 22 MR. RICH: Objection.
 23 **A. I don't know the answer to that question.**
 24 Q. (BY MR. KATZ) Who else would have paid it?

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<p style="text-align: right;">Page 246</p> <p>1 A. Well, I believe that NAM did not 2 arbitrarily pay for everything for us. First of 3 all, you make it sound like they paid all this 4 money for us. We operated the company and 5 generated sales and the cost of doing business was 6 directly deducted from those sales.</p> <p>7 Q. Going on to your -- going on in your 8 interrogatory answer, you say that NAM agreed that 9 Mr. Fireman and Ms. Raider would continue to manage 10 the CCMI business unit, including sales, operation, 11 personnel and budgets. Right?</p> <p>12 A. That is our understanding.</p> <p>13 Q. Okay. But that's not in the Stock Purchase 14 Agreement, is it? Yes or no?</p> <p>15 A. I don't know.</p> <p>16 Q. There's no statement in the Stock Purchase 17 Agreement that says that you and Mr. Fireman would 18 continue to manage CCMI's business unit, including 19 sales, operations, personnel and budgets? You can 20 agree with that, can't you?</p> <p>21 A. I don't know. I don't know if it's stated. 22 I don't know if it's stated. I don't know.</p> <p>23 Q. Well, take a look and tell me yes or no. 24 It's either there or it's not.</p>	<p>1 right?</p> <p>2 MR. RICH: Objection. Asked and 3 answered.</p> <p>4 A. There was nothing in the Stock Purchase 5 Agreement that said they could or they couldn't.</p> <p>6 Q. (BY MR. KATZ) And the rebranding of CCMI 7 was part of a company-wide rebranding initiative, 8 right?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Coupon Machines and S.S.I. were also 11 rebranded SmartSource, weren't they?</p> <p>12 A. They were already called SmartSource before 13 we went there.</p> <p>14 Q. Okay, so that was already part of the 15 company-wide brand, right?</p> <p>16 A. They were part of the company-wide brand.</p> <p>17 Q. So News America Marketing was simply making 18 you part of the company by giving you this new 19 brand, right?</p> <p>20 MR. RICH: Objection.</p> <p>21 A. Taking an established brand and changing 22 its name without supporting it is not making it 23 part of the company.</p> <p>24 Q. (BY MR. KATZ) Okay. In the next page of</p>
<p style="text-align: right;">Page 247</p> <p>1 A. I cannot find that statement.</p> <p>2 Q. Okay. You object to the fact that CCMI's 3 name was changed to SmartSource Direct, right?</p> <p>4 A. Yes.</p> <p>5 Q. But there was nothing in the Stock Purchase 6 Agreement which prevented NAM from rebranding CCMI, 7 right?</p> <p>8 A. Consumer Card Marketing was an entity that 9 had a value in the marketplace as a brand. No 10 discussions were ever made --</p> <p>11 Q. I'm not asking -- that's not my question. 12 Ms. Raider, we don't have that much time left in 13 the day today, and I want you to answer the 14 questions directly and that way we have a chance of 15 finishing, but if you go off and answer questions 16 that aren't asked or give speeches, we're never 17 going to get there. So just answer my questions 18 yes or no or you don't know and I think we'll do 19 much better.</p> <p>20 You object to the fact that CCMI's name 21 was changed to SmartSource Direct, right?</p> <p>22 A. Yes.</p> <p>23 Q. There was nothing in the Stock Purchase 24 Agreement which prevented NAM from rebranding CCMI,</p>	<p>1 your interrogatory answers, you say NAM consciously 2 elected not to run CCMI at all, but rather to use 3 CCMI's parts to enhance and promote other aspects 4 of NAM's business?</p> <p>5 MR. RICH: What page are you on?</p> <p>6 Sorry.</p> <p>7 MR. KATZ: This is on page seven.</p> <p>8 MR. RICH: Oh, okay. We were on page 9 four.</p> <p>10 Q. (BY MR. KATZ) What do you mean by this 11 statement?</p> <p>12 A. Within days of being acquired, they took 13 our technology group to Connecticut to work on the 14 dot com business. They eliminated people in 15 Braintree without properly replacing the services 16 in another part of the corporation, like accounting 17 staff. Those are two examples.</p> <p>18 Q. Any other?</p> <p>19 A. I'm sure I will think of more.</p> <p>20 Q. But you don't know of any others as you sit 21 here now?</p> <p>22 A. The fact that NAM ignored CCMI is prevalent 23 throughout the five years. They did not actively 24 promote the company to the rest -- our company to</p>

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1 **the rest of the business to promote sales of its
2 products.**

3 Q. Now, I think I may have asked you this
4 before, but do you contend that you and Mr. Fireman
5 had the power to -- or should have had the power to
6 continue to manage the CCMI business units,
7 including sales, operations, personnel and budgets?

8 **A. Yes.**

9 Q. Okay. Can you show me where that's in the
10 Stock Purchase Agreement?

11 **A. I have answered your question before.**

12 Q. And what did you say?

13 **A. I said it is not stated that it can or it
14 cannot.**

15 Q. Okay. Was it your view that NAM had agreed
16 at some point in time to make any expenditure that
17 you or Mr. Fireman recommended?

18 **A. I'm sorry. Would you please ask that
19 again?**

20 Q. Is it your position that NAM at some point
21 in time had agreed to make any expenditure that you
22 or Mr. Fireman recommended?

23 **A. Any expenditure?**

24 Q. Yes.

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1 **relations expenses, all those things that maintain
2 the brand in the marketplace and build the -- and
3 enable the company to drive sales.**

4 Q. So your position is that NAM was obligated
5 to do everything that was in the business plan?

6 **A. They were obligated to support the business
7 plan.**

8 Q. And does that mean do everything that was
9 stated in the business plan; do all the hires and
10 do all the promotional expenses which you outlined?

11 **A. Yes, that's right.**

12 Q. And where in the Stock Purchase Agreement
13 is that stated?

14 **A. It is stated in the intention to help the
15 business grow. They intended to help the business
16 grow. They bought the company. They -- unless you
17 think they didn't buy the company to make it grow,
18 but you buy a company to make it grow, and the
19 company presents a plan that explains how to make
20 it grow, and in fact, that is standard business
21 practice. You buy a company to make it grow.
22 However, if you buy the company and take apart the
23 pieces, then was your intention really to make it
24 grow? I don't know. I think the answer is not,**

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1 **A. I'm not sure what any means.**

2 Q. Well, if you recommended that you hire five
3 people, was NAM obligated to hire five people? Let
4 me give you an example.

5 **A. NAM had a commitment to help us drive our
6 business plan to \$50 million, and if that meant
7 hiring five people, they had a requirement to help
8 us to do that.**

9 Q. And how were they to know what it took to
10 get to your business plan?

11 **A. We presented them with a business plan that
12 they agreed upon.**

13 Q. And so getting to your business plan, is it
14 your position that they were obligated to follow
15 all the steps that you thought necessary to get to
16 the business plan?

17 **A. They approved the business plan. The
18 business plan is a definition of the actions that
19 are required to build the company.**

20 Q. Well, no, the business plan is the
21 objective of getting to \$50 million; isn't that
22 right?

23 **A. The business plan stated head count,
24 promotion expense, trade promotion expense, public**

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1 **but under the intention to support us with sales,
2 they intended to help us make the company grow.**

3 Q. You don't have any doubt about that?

4 **A. I believe that they had an intention to
5 help us grow based on our business plan. I believe
6 that that is the condition under which we sold the
7 business and under which they bought the business
8 but did not take the actions to support us, end of
9 statement.**

10 Q. Okay. You next say on page seven of your
11 interrogatory answers, NAM dictated to CCMI all
12 decisions concerning staffing and salary and
13 imposed their hiring freeze on CCMI's group. Do
14 you see that?

15 **A. Yes, sir.**

16 Q. Now, NAM had the right to take this action
17 under the Stock Purchase Agreement, did it not?

18 **A. No. NAM had a commitment to help us
19 execute our plan.**

20 Q. NAM's hiring freeze was a function of the
21 economy, wasn't it?

22 **A. No. NAM's hiring freeze was a function of
23 the fact that they had lost market share and were
24 not making their profit point and therefore, they**

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<p style="text-align: right;">Page 254</p> <p>1 were going to put a hiring freeze on their base 2 business because they were in trouble on their base 3 business. They were losing business.</p> <p>4 Q. So it's your view that CCMi was to be 5 treated better than the base business? Is that 6 right?</p> <p>7 A. It is my view that they had an obligation 8 to help CCMi grow as a company.</p> <p>9 Q. Even if that was at variance with other 10 policies it was taking within -- within the 11 company?</p> <p>12 A. I don't know what policies were taken 13 within the company.</p> <p>14 Q. Well, there was a hiring freeze?</p> <p>15 A. That's not a policy. That's an action.</p> <p>16 Q. Okay. Well, it's a policy for some period 17 of time? We can agree on that, can't we?</p> <p>18 A. Yes.</p> <p>19 Q. And CCMi wasn't singled out within NAM, 20 right?</p> <p>21 A. No.</p> <p>22 Q. It was company-wide?</p> <p>23 A. Yes.</p> <p>24 Q. And what you're saying is that NAM should</p>	<p style="text-align: right;">Page 256</p> <p>1 Stock Purchase Agreement?</p> <p>2 A. No.</p> <p>3 Q. It didn't have the right to take this 4 action under 6.8?</p> <p>5 A. No.</p> <p>6 Q. <u>What staff were fired?</u></p> <p>7 A. They fired creative staff, secretaries, 8 accounting people and programmers.</p> <p>9 Q. And what jobs were consolidated?</p> <p>10 A. They consolidated IS -- technology people.</p> <p>11 Q. <u>And all of those decisions were bad?</u></p> <p>12 A. Yes.</p> <p>13 Q. <u>Why?</u></p> <p>14 A. Because they didn't leave an infrastructure 15 in place to help us operate the company properly.</p> <p>16 Q. <u>You had an assistant, right?</u></p> <p>17 A. I had a secretary for a period of time.</p> <p>18 Q. <u>Didn't you always have a secretary?</u></p> <p>19 A. I always had a secretary for a period -- I 20 always had a secretary.</p> <p>21 Q. <u>And you talk about taking key pieces of</u> 22 CCMI's business and moving them to make NAM's other 23 divisions more profitable. What are you referring 24 to here?</p>
<p style="text-align: right;">Page 255</p> <p>1 have made an exception for CCMi?</p> <p>2 A. Yes, and if they didn't make an exception 3 for CCMi in the hiring freeze, which prevented us 4 from getting our sales, then they should have made 5 an exception on the earn-out calculation that 6 prevented us from getting our sales.</p> <p>7 Q. And where in the Stock Purchase Agreement 8 is that stated?</p> <p>9 A. It is stated under the intention that they 10 were to help the company grow. It is stated under 11 the obligation that they would -- to help the 12 company grow and that we would make our earn-out 13 calculations.</p> <p>14 Q. But your earn-out calculation wasn't 15 guaranteed?</p> <p>16 A. Our earn-out calculation was a basis on 17 which the company -- otherwise, we would have taken 18 all the cash out at the closing, but David DeVoe 19 couldn't afford that, so we created a mutual 20 agreement where we could take it out over time and 21 help the company grow, and he agreed to that.</p> <p>22 Q. You next say that NAM set CCMi's budget, 23 then fired staff and consolidated jobs to NAM. 24 Didn't NAM have the right to do this under the</p>	<p style="text-align: right;">Page 257</p> <p>1 A. They took our technology expertise to 2 support the dot com business.</p> <p>3 Q. <u>And by this, are you referring to the move</u> 4 <u>of Bill Adam to Wilton?</u></p> <p>5 A. And others.</p> <p>6 Q. <u>And who are the others?</u></p> <p>7 A. There were two other people, Craig Juras 8 and Mike -- I forgot his last name.</p> <p>9 Q. <u>Wasn't this beneficial to CCMi?</u></p> <p>10 A. No, it was not.</p> <p>11 Q. <u>Wasn't it beneficial for Bill Adam and the</u> 12 <u>others to be with a whole IT department and have</u> 13 <u>the resources of the entire IT staff of News</u> 14 <u>America Marketing instead of being off by himself</u> 15 <u>up here?</u></p> <p>16 A. No, it was not.</p> <p>17 Q. <u>That's your opinion?</u> 18 MR. RICH: Objection.</p> <p>19 Q. <u>(BY MR. KATZ) Right?</u></p> <p>20 A. You asked me a question. I gave you the 21 answer. It was not.</p> <p>22 Q. <u>But other people could reasonably disagree,</u> 23 <u>couldn't they?</u></p> <p>24 A. No, they could not, because the scope of</p>

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1 their jobs changed to support the NAM organization
 2 and not CCMI. They were not allowed to go to sales
 3 meetings to help us close because they were working
 4 on other projects, which stopped us from closing
 5 business. At the last minute they were taken off
 6 of presentations. They did not complete their work
 7 on time to help us facilitate closing sales of
 8 customers for software. They were working on other
 9 projects. So the answer is they were moved to NAM,
 10 but was it in our best interest that they did that?
 11 The answer is no, it was not.

12 Q. But couldn't that have been remedied if you
 13 understood the technology part of the business
 14 better?

15 A. I told you I do not write software code.

16 Q. But did you take any courses to attempt to
 17 learn what additional information you might need to
 18 know in order to replace Bill Adam's presence at
 19 sales meetings?

20 A. I would like to tell you that a technology
 21 person needs to talk to a technology person
 22 regarding architecture and structure. I am a sales
 23 and marketing executive. I know how the product
 24 works. I don't need to know exactly what the

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1 did he ever talk to anybody at Duane Reade about
 2 technology, I would say the answer is yes.

3 Q. And he met with people at Duane Reade
 4 regarding the Aspen system, right?

5 A. I can't testify to that.

6 Q. Are you sure about that?

7 A. I don't know if he met with people.

8 Q. Now, you had one other customer, or
 9 potential customer for the Aspen system. Do you
 10 remember who that was?

11 A. No, I do not.

12 Q. Do you remember any other customer for the
 13 Aspen system besides Duane Reade?

14 A. Sutton Place Gourmet. No, excuse me. It
 15 was a hardware company. I can't remember the name.

16 Q. So you don't know whether Bill Adam met
 17 with people from that retailer or not, right?

18 A. To the best of my knowledge, Bill Adam met
 19 with retailers on occasion, but I also know that he
 20 was not able to attend meetings with retailers
 21 where we could have sold products because he was
 22 distracted with other dot com business and was told
 23 not to attend, and A&P was one of those customers.

24 Q. When was that meeting scheduled?

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1 functions are. Technology people want to talk to
 2 technology people, and when you are selling systems
 3 worth hundreds of thousands of dollars, you need a
 4 technology person to talk to a technology person.

5 Q. And so is it your testimony that Bill Adam
 6 never spoke to anybody from Duane Reade regarding
 7 technology when you were selling Epiphany or
 8 selling the Aspen system?

9 A. I believe that Bill Adam's time to help us
 10 support sales of the technology products was
 11 limited and in some cases not at all.

12 Q. But you're not telling me that he didn't
 13 interact with people at Duane Reade regarding
 14 Aspen, are you?

15 A. Could you tell me what time frame you are
 16 speaking about?

17 Q. The time period you were at News America
 18 Marketing.

19 A. I think your question is extremely broad,
 20 so could you be very precise?

21 Q. Well, during any period of time, did Bill
 22 Adam speak to the technology people at Duane Reade
 23 regarding the Aspen system?

24 A. If you are asking at any period of time,

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1 A. I don't recall the exact date.

2 Q. Do you remember what year?

3 A. I do not recall the exact date, but it is
 4 written in the documents.

5 Q. Was it a meeting that you were present at?

6 A. It was a meeting that I had scheduled.

7 Q. Did the meeting take place?

8 A. No, it did not.

9 Q. It didn't take place at all?

10 A. No, I don't believe so.

11 Q. So you didn't meet with the sales
 12 counterpart that you -- the non-technological sales
 13 counterpart that you would ordinarily deal with at
 14 A&P?

15 A. I was called at 8 o'clock at night the
 16 night before the meeting to tell me that Bill Adam
 17 would not be attending the meeting because he was
 18 doing things for the dot com business, and I told
 19 Henri Lellouche on the phone that if he didn't
 20 attend the meeting we would never get the sale
 21 because there were technology questions that
 22 related to the project, and he said too bad.

23 Q. Did you try to reschedule the meeting?

24 A. It was too late. They were making a

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<p>1 decision.</p> <p>2 Q. How do you know that?</p> <p>3 A. Because they went with somebody else.</p> <p>4 Q. Who did they go with?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know that they went with anybody?</p> <p>7 A. Yes, they did.</p> <p>8 Q. How do you know that?</p> <p>9 A. Because they have a loyalty card.</p> <p>10 Q. But how do you know they didn't do it in-house?</p> <p>11 A. They didn't have the capability to do it in-house.</p> <p>12 Q. But you don't know who they used?</p> <p>13 A. I don't remember.</p> <p>14 Q. You knew at one point?</p> <p>15 A. Of course I knew at one point.</p> <p>16 Q. But you don't remember now?</p> <p>17 A. No, but we could probably -- in all the documents in all of the boxes, I'm sure there's correspondence related to that issue, and if you looked for it, I'm sure you would find it.</p> <p>18 Q. You also say in your interrogatory answers NAM dictated how CCMi could interact with NAM's</p>	<p>Page 262</p> <p>1 A. I am not sure where you are looking. Okay.</p> <p>2 Q. Bottom of page seven.</p> <p>3 A. Okay. Yes.</p> <p>4 Q. Right? That's what you say?</p> <p>5 A. Yes, that is correct.</p> <p>6 Q. But that's patently wrong, is it not?</p> <p>7 A. No sir, you're wrong.</p> <p>8 Q. NAM paid for the overhead in Braintree and then in the Hancock Building, right?</p> <p>9 A. I assume so.</p> <p>10 Q. It handled HR? You didn't have to handle it, right?</p> <p>11 A. No, I believe Robert Coughlin handled HR.</p> <p>12 Q. Okay, and Robert Coughlin was part of NAM, right?</p> <p>13 A. That is correct.</p> <p>14 Q. NAM handled accounting, right?</p> <p>15 A. Such as it was.</p> <p>16 Q. NAM handled travel arrangements?</p> <p>17 A. Yes.</p> <p>18 Q. NAM even paid for your parking at the Hancock Building, right?</p> <p>19 A. Yes.</p> <p>20 Q. In fact, I think we talked about this</p>
<p>1 sales staff, who CCMi could hire as consultants, how to negotiate with vendors, a development plan for software, how and when CCMi could attend trade shows, on changing the name and on CCMi's annual budgets. Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And all of this was permitted under Section 6.8 of the Stock Purchase Agreement, was it not?</p> <p>4 A. No, it was not.</p> <p>5 Q. NAM as a company does not generally participate in trade shows; is that right?</p> <p>6 A. NAM companies that they bought did participate in trade shows.</p> <p>7 Q. But NAM as a company doesn't generally participate in trade shows?</p> <p>8 A. That is correct.</p> <p>9 Q. But in the case of CCMi, NAM made exceptions from time to time and supported CCMi going to trade shows; isn't that right?</p> <p>10 A. NAM supported the new companies that they bought to attend trade shows -- CCMi was one of those companies -- for one year.</p> <p>11 Q. Now, you go on to say NAM provided little or no support for finance.</p>	<p>Page 263</p> <p>1 before. When you were in Braintree, the landlord was the estate of Mr. Fireman's father, right?</p> <p>2 A. That is correct.</p> <p>3 Q. NAM made capital investments for CCMi; isn't that right?</p> <p>4 A. I don't understand what your question is.</p> <p>5 Q. Well, it invested over a million dollars, probably close to \$2 million for the Epiphany system; isn't that right?</p> <p>6 A. I don't know that to be the case.</p> <p>7 Q. Do you have any doubt that that's the case?</p> <p>8 A. I have a doubt that NAM invested money in Epiphany for the help of CCMi to the extent of the millions of dollars you represent.</p> <p>9 Q. Well, wasn't the Epiphany system first located by Mr. Adam and Mr. Fireman?</p> <p>10 A. Yes, it was.</p> <p>11 Q. And they brought it to the attention of NAM?</p> <p>12 A. They did.</p> <p>13 Q. And it was a result of their bringing it to the attention of NAM that it was ultimately acquired; isn't that right?</p> <p>14 A. That is correct.</p>

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1 Q. You go on to say that NAM dictated when and
 2 how speaking engagements would run and the roles
 3 and responsibilities for Mr. Fireman and
 4 Ms. Raider?

5 **A. That is correct.**

6 Q. Now, NAM had the right to do so under 6.8
 7 of the Stock Purchase Agreement and under your and
 8 Mr. Fireman's employment agreement; isn't that
 9 right?

10 **A. No, that is not right.**

11 Q. Let's go back to your employment agreement,
 12 paragraph two. Do you have that in front of you?

13 **A. When you say paragraph two --**

14 Q. Paragraph number two.

15 **A. Okay.**

16 Q. It says you -- meaning you, Ms. Raider --
 17 shall perform such duties -- I'm going to eliminate
 18 some of the verbiage -- as are assigned to you;
 19 isn't that right?

20 **A. Right.**

21 Q. Now, NAM as a company does not view
 22 speaking engagements by executives as important to
 23 its business, right?

24 **A. I do not know that.**

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1 direct report to Mr. Fireman?

2 **A. No, he wasn't. It said shortly thereafter.**

3 **At one point, Mr. Coughlin did not report to him.**
 4 **He reported to Henri.**

5 Q. Okay, but when did that occur?

6 **A. I don't know.**

7 Q. Now, you say that you and Mr. Fireman were
 8 excluded from strategy sessions?

9 **A. Correct.**

10 Q. Didn't you attend weekly meetings?

11 **A. Those weren't strategy sessions. We**
 12 **attended weekly reports on activities inside the**
 13 **company.**

14 Q. Didn't you give annual presentations to
 15 senior management?

16 **A. No.**

17 Q. You claim that Paul Carlucci declared that
 18 he saw no future in targeted direct mail?

19 **A. That is correct.**

20 Q. Now, NAM, if it wanted to, was entitled to
 21 make this business judgement under Section 6.8 if
 22 it wished, was it not?

23 **A. No, it was not.**

24 Q. Where in the Stock Purchase Agreement does

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1 Q. Let's go to interrogatory answer number
 2 six.

3 **A. Okay.**

4 Q. And under the heading NAM marginalized the
 5 role of Mr. Fireman and Ms. Raider, it says by the
 6 end of the year 1999 -- I'm inserting 1999 -- NAM
 7 had taken away much of CCM's sales staff and
 8 support structure. Who had they taken away?

9 **A. I had no retailer sales force. I had one**
 10 **manufacturing salesperson. We had no assistant**
 11 **accountant. We had people who were not working on**
 12 **the code for the business. There were a list of**
 13 **people that they took away.**

14 Q. Weren't those functions being done by
 15 people in Wilton?

16 **A. No, they were not.**

17 Q. You say that Mr. Fireman had no direct
 18 reports at this point in time. Is that right?

19 **A. I don't know where you're looking at that**
 20 **statement.**

21 Q. Okay. It says shortly thereafter, CCM's
 22 general manager Fireman had no direct reports?

23 **A. That's correct. He did not.**

24 Q. What about Mr. Coughlin? Wasn't he a

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1 it say that it didn't have discretion to determine
 2 what it wanted to do with respect to targeted
 3 direct mail?

4 **A. It had a commitment. It had an intention.**

5 **It bought the company to help the company grow to**
 6 **its business plan. It had a commitment as stated**
 7 **in its intention to provide sales support to make**
 8 **the company grow. Therefore, knowing it was a**
 9 **targeted direct mail company, having had direct**
 10 **conversations with Mr. Carlucci about the fact that**
 11 **it was a targeted direct mail company, he then made**
 12 **an arbitrary decision not to support targeted**
 13 **direct mail? You have to ask yourself what your**
 14 **intentions were for the business to begin with,**
 15 **right? It was misrepresenting what was going to**
 16 **happen?**

17 Q. Direct mail was part of what you termed
 18 marketing and consulting?

19 **A. Yes, that is correct.**

20 Q. And didn't NAM hire a sales force to
 21 exploit direct mail?

22 **A. Years after the company was purchased.**

23 Q. Isn't that what Kevin Tripp was hired to
 24 do?

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<p>1 A. Kevin Tripp was one person.</p> <p>2 Q. When was he hired?</p> <p>3 A. In 2000, I think.</p> <p>4 Q. And what part of 2000?</p> <p>5 A. I don't remember.</p> <p>6 Q. And you were involved in his hiring, right?</p> <p>7 A. I was.</p> <p>8 Q. And who worked under him?</p> <p>9 A. Chris Sellinger.</p> <p>10 Q. Anybody else?</p> <p>11 A. No.</p> <p>12 Q. You say that targeted direct mail was the backbone of CCMI's business?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. But in 1998, you did only \$72,000 of consulting and marketing out of the total gross revenue of \$3.7 million; isn't that right?</p> <p>15 A. That's correct.</p> <p>16 Q. And only part of that \$72,000 had anything to do with targeted direct mail, right?</p> <p>17 A. I believe, Mr. Katz, you're misunderstanding the situation, so let me make it clear. The corporation was growing. The market was moving. The market opportunity was to execute</p>	<p>Page 270</p> <p>1 relationships with people on the operations side of the loyalty marketing and he was not able to facilitate or build additional relationships or participate in conversations with a lot of people because he was -- was a sole ranger in terms of his day-to-day execution of programs.</p> <p>2 Q. But he was a sole ranger when he was working for CCMI before the acquisition?</p> <p>3 A. No, he built strategic relationships with people who were servicing the loyalty marketing space in terms of data entry facilities, in terms of card facilities, in terms of business development and strategic partnerships. He was out in the marketplace on the operations side of the business building those relationships that would make us stronger from a foundation point of view.</p> <p>4 Q. Well, but he continued to do that after he was employed by News America Marketing?</p> <p>5 A. No, that's not right.</p> <p>6 Q. He certainly had relationships with people in the loyalty industry and in the card industry?</p> <p>7 A. He had relationships with only those people who he had cultivated before the sale. He was not able to facilitate relationships with incremental</p>
<p>1 targeted direct mail using retailer databases for customer specific purchase data. That was exploding and that is in the press. You can read it. It is customer -- other companies who competed against us enjoyed it. And therefore, the growth of our company and the plan for our company was based on executing targeted direct mail using retailer databases in concert with manufacturers. That is the growth potential of the business. That is how we would accelerate to \$50 million, and therefore, commenting that our business was small in 1998 was in fact small because we did not have a significant sales force to call on manufacturers, which was the reason we decided to do this transaction with News America.</p> <p>16 Q. Now, you go on to say in your interrogatory answers Ms. Raider and Mr. Fireman were silenced in the marketplace of loyalty marketing?</p> <p>19 A. That is correct.</p> <p>20 Q. Now, Mr. Fireman was never a speaker at seminars like you did, correct?</p> <p>22 A. Mr. Fireman had relationships with the community, the manufacturing community of loyalty cards and stored value cards, and he had</p>	<p>Page 271</p> <p>1 companies and processes going forward. He was taken out of that role.</p> <p>3 Q. Didn't he expand his view toward other types of stored value cards and develop a new set of relationships?</p> <p>6 A. He expand -- he didn't expand relationships. He cultivated relationships with people who he knew prior to the sale.</p> <p>9 Q. And he worked on new projects, right?</p> <p>10 We'll get to some of them in a few minutes.</p> <p>11 A. He worked on new projects? What's a new project?</p> <p>13 Q. The Toshiba project, that was something that was totally different from anything that you had done at CCMI, right?</p> <p>16 A. Toshiba was a stored value product.</p> <p>17 Q. Right.</p> <p>18 A. Toshiba was a customer of Citibank, I believe, which was a bank that was a customer of NAM's, so he worked on a stored value project that NAM asked him to work on. NAM -- I mean, excuse me, News Corp., not NAM.</p> <p>23 Q. And that worked tremendously to CCMI's benefit, did it not? Because ultimately, the</p>

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1 Toshiba products brought in a tremendous amount of
 2 revenue for CCMi?

3 **A. What's your definition of tremendous?**

4 Q. Well, several millions of dollars over a
 5 number of years.

6 **A. I do not believe that's accurate.**

7 Q. Well, we'll ask Mr. Fireman when he's here.
 8 I think he'll remember. But wasn't the Toshiba
 9 project the largest project, the largest source of
 10 revenue that CCMi post-acquisition had during the
 11 period of time you and Mr. Fireman were employed by
 12 CCMi?

13 **A. I don't believe that's so.**

14 Q. What do you -- how much revenue do you
 15 think it brought in?

16 **A. I don't recall.**

17 Q. You have no idea?

18 **A. No.**

19 Q. Nothing prevented you from attending any
 20 conference that you wanted to attend, right?

21 **A. That's not true.**

22 Q. NAM never said you can't attend?

23 **A. They did.**

24 Q. When?

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1 Q. Didn't you go to the chain drugstore
 2 conference at some point?

3 **A. I went to the very first one after the sale
 4 of the business and none after that.**

5 Q. Didn't you go to a conference in Phoenix
 6 relating to the food industry?

7 **A. I don't remember.**

8 Q. You said in your interrogatory that NAM
 9 cancelled trade advertising. Do you remember that?

10 **A. Yes.**

11 Q. NAM does not as a company engage in trade
 12 advertising; isn't that right?

13 **A. No, that's not true.**

14 Q. Well, tell me why you say it's not true.

15 **A. NAM puts advertising for their products in
 16 the press. They stopped us from advertising. They
 17 said they would put it under the NAM logo, but they
 18 didn't. Our name was never mentioned. I
 19 specifically spoke to Jennifer Jane about that at
 20 the time of the sale and she made commitments to me
 21 that they would include our name in directories for
 22 products and services that people use as reference
 23 guides for buying things, and our name was never
 24 there.**

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1 **A. I couldn't attend the NACDS conference.**

2 **There were several conferences where I was told I
 3 can't go.**

4 Q. And why did they say you can't go?

5 **A. Because NAM had a policy -- excuse me. NAM
 6 had a perspective that executives who attended
 7 conferences could be solicited by companies to go
 8 work for them.**

9 Q. And they didn't want you to do that?

10 **A. They didn't want me to be in the public
 11 domain.**

12 Q. And so they had a business reason for not
 13 wanting you to attend?

14 **A. Yes.**

15 Q. But you did in fact continue to attend
 16 certain conferences; isn't that right?

17 **A. I don't recall.**

18 Q. Didn't you attend chain drugstore
 19 conferences and food industry conferences
 20 throughout your time at News America Marketing?

21 **A. No, that is not true.**

22 Q. You did attend some, didn't you?

23 **A. I sat on the boards of a couple of women's
 24 organizations and I attended those board meetings.**

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1 Q. You're sure about that?

2 **A. I am sure.**

3 Q. You say that NAM did not provide public
 4 relations support?

5 **A. That is correct.**

6 Q. But you'll agree with me, won't you, that
 7 NAM issued press releases on the Aspen system when
 8 it came out, did it not?

9 **A. NAM released -- NAM had their public
 10 relations company develop a press release, but they
 11 did nothing to support getting it into the press
 12 for it to be any coverage at all.**

13 Q. In your opinion?

14 **A. That's a fact. It was not covered
 15 anywhere.**

16 Q. NAM did not provide sales support to grow
 17 the business. That's another of your contentions,
 18 right?

19 **A. That is correct.**

20 Q. And you say that Chris Mixson directed the
 21 sales force to focus on NAM's goals, which did not
 22 support CCMi's products? Is that your view?

23 **A. That's correct.**

24 Q. And what's the basis for that statement?

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<p style="text-align: right;">Page 278</p> <p>1 A. Chris Mixson was running the sales force on 2 the manufacturing side and he orchestrated the 3 consolidation of ACT Media's sales force into NAM, 4 and he had to make sales goals, and none of those 5 sales goals included our products.</p> <p>6 Q. How do you know that?</p> <p>7 A. I asked him. I asked him for help and he 8 said no.</p> <p>9 Q. When did that occur?</p> <p>10 A. At a Christmas party in 1999 in New York 11 City.</p> <p>12 Q. Where in New York City?</p> <p>13 A. At the NAM Christmas party.</p> <p>14 Q. Where was it located?</p> <p>15 A. In New York City.</p> <p>16 Q. But where in New York City?</p> <p>17 A. I don't know what hotel it was at.</p> <p>18 Q. You don't remember?</p> <p>19 A. I don't remember the name of the hotel.</p> <p>20 Q. After Mr. Mixson said this to you, what did</p> <p>21 you do?</p> <p>22 A. I talked to David DeVoe --</p> <p>23 Q. And what did he say?</p> <p>24 A. -- at the Christmas party.</p>	<p style="text-align: right;">Page 280</p> <p>1 would include SmartSource Direct products in their 2 conversation.</p> <p>3 Q. And did they?</p> <p>4 A. I don't know.</p> <p>5 Q. And who were the -- who were the people in</p> <p>6 the SmartSource dot com sales force?</p> <p>7 A. I don't remember their names.</p> <p>8 Q. Did you ever talk to them?</p> <p>9 A. No.</p> <p>10 Q. Do you have any idea how many people were</p> <p>11 in the SmartSource dot com sales force?</p> <p>12 A. No, because those people reported to Kevin 13 Tripp and Kevin Tripp reported to Marty Garofalo.</p> <p>14 Q. So you don't know what efforts one way or</p> <p>15 the other or to what extent these individuals made</p> <p>16 on behalf of SmartSource Direct?</p> <p>17 A. I know that Kevin Tripp reported constantly 18 that they were -- they were making no sales and 19 that they were not focused on helping us.</p> <p>20 Q. Now you had a retail sales force at some</p> <p>21 point, right?</p> <p>22 A. I had a few people in the sales force.</p> <p>23 Q. Who were the people who worked for you?</p> <p>24 A. Jim Mumm.</p>
<p style="text-align: right;">Page 279</p> <p>1 Q. And what did he say?</p> <p>2 A. He said he would talk to Chris.</p> <p>3 Q. And did he talk to Chris?</p> <p>4 A. I have no idea.</p> <p>5 Q. Did you ever follow up with Mr. DeVoe?</p> <p>6 A. We both -- we talked to David constantly 7 about the fact that we were not getting the sales 8 support.</p> <p>9 Q. At some point in your interrogatory</p> <p>10 answers, you say other than a few individuals, for</p> <p>11 at least one year, the duties of CCM's</p> <p>12 manufacturer sales source was performed by the</p> <p>13 SmartSource dot com sales force. Do you remember</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. What do you mean by that?</p> <p>17 A. SmartSource dot com was another business 18 that NAM bought at the same time as they bought 19 CCM, and those people were to focus on selling 20 their Internet products to manufacturers. They -- 21 NAM made the decision instead of having Kevin Tripp 22 have support or being supported by the whole 23 organization for NAM that these brand new people 24 who had just been hired for SmartSource dot com</p>	<p style="text-align: right;">Page 281</p> <p>1 Q. He was in New York, right?</p> <p>2 A. Yes.</p> <p>3 Q. You hired him? You hired him, right?</p> <p>4 Right?</p> <p>5 A. Yes.</p> <p>6 Q. After the acquisition, right?</p> <p>7 A. I did.</p> <p>8 Q. Okay. Who else?</p> <p>9 A. Bob Stappler.</p> <p>10 Q. And where was he?</p> <p>11 A. I don't remember.</p> <p>12 Q. How about Kevin McKenna?</p> <p>13 A. Kevin McKenna.</p> <p>14 Q. And where was he?</p> <p>15 A. New York.</p> <p>16 Q. And he tried to sell Key Foods on the Aspen</p> <p>17 system?</p> <p>18 A. He did.</p> <p>19 Q. But he neglected to tell them that they</p> <p>20 would be the first customer, right?</p> <p>21 A. I don't know that to be true.</p> <p>22 Q. You've heard it stated, though, haven't</p> <p>23 you?</p> <p>24 A. No, I have not.</p>

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1 Q. I'm telling you that for the first time?
 2 **A. Right.**
 3 Q. But Key Foods never signed on for the Aspen
 4 system, right?
 5 **A. I don't know that.**
 6 Q. This was something that you were selling,
 7 was it not? Weren't you selling the Aspen system?
 8 **A. I was.**
 9 Q. And Key Foods was a customer that you tried
 10 to get?
 11 **A. I didn't call on Key Foods.**
 12 Q. Right.
 13 **A. I never made a sales call on Key Foods. I**
 14 **don't know who the senior management is. I know**
 15 **nothing about the details of that.**
 16 Q. You delegated that to Kevin McKenna?
 17 **A. I did.**
 18 Q. And Kevin McKenna never closed the sale,
 19 right?
 20 **A. I don't believe the sale closed.**
 21 Q. You never got a contract?
 22 **A. I don't know the answer to that.**
 23 Q. You never got any revenue from Key Foods
 24 for the Aspen system? Isn't that a fact?

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1 **A. I don't know the answer to your question.**
 2 Q. Okay. Let's talk about Rick Britton. You
 3 hired him too, right?
 4 **A. I did.**
 5 Q. He was out in Los Angeles?
 6 **A. That's right.**
 7 Q. You had to terminate him because he had an
 8 anger management problem; isn't that correct?
 9 **A. Yes, sir.**
 10 Q. And Mr. Fireman had an anger management
 11 problem, too; isn't that correct?
 12 **A. Not at all.**
 13 Q. Who was Diana Fontaine?
 14 **A. Our assistant.**
 15 Q. Didn't she complain to you about
 16 Mr. Fireman's treatment of her?
 17 **A. Not that I recall.**
 18 Q. Didn't Ms. Fontaine call Henri Lellouche in
 19 tears to complain about Mr. Fireman's treatment of
 20 her?
 21 **A. Not that I recall.**
 22 Q. You never saw any of that?
 23 **A. Never saw what?**
 24 Q. Any of Ms. Fontaine's concern that she was

1 being mistreated by Mr. Fireman?
 2 **A. I don't recall that.**
 3 Q. You don't recall any of that?
 4 **A. Right.**
 5 Q. And then ultimately, at some point, what
 6 happened to Ms. Fontaine?
 7 **A. NAM fired her.**
 8 Q. Why?
 9 **A. Because they wanted to have someone cheaper**
 10 **to the job and they wanted someone who would work**
 11 **part-time.**
 12 Q. You're sure about that?
 13 **A. I am sure about that.**
 14 Q. Okay. Now, back to employees, you
 15 interviewed many, did you not?
 16 **A. I would not say many.**
 17 Q. You reviewed many resumes, did you not?
 18 **A. What's your definition of many?**
 19 Q. Well, what's your definition of many?
 20 **A. Many is ten, 20.**
 21 Q. You reviewed ten, 20 resumes?
 22 **A. No, I did not.**
 23 Q. How many resumes did you review?
 24 **A. A few.**

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<p style="text-align: right;">Page 286</p> <p>1 Q. And what's the time period that's embraced 2 by this document alone? 3 A. Five months. 4 Q. And when does the time -- what is the time 5 period? 6 A. September to January. 7 Q. September '99 to January 2000? 8 A. There's no date on here, the ending 9 calendar date, so I don't know the answer. 10 Q. If you look at page one of the exhibit -- 11 A. Yeah. 12 Q. -- that makes it pretty clear that we're 13 talking about December -- September '99 to January 14 2000, does it not? 15 A. Most likely. 16 Q. Just to go back to the subject we talked 17 about previously, we -- selling direct mail, did 18 you ever sell direct mail? 19 A. Yes. 20 Q. Okay. You need a specialized sales force 21 to sell direct mail, do you not? 22 A. No. 23 Q. Don't you need to understand targeting when 24 you're selling direct mail?</p>	<p style="text-align: right;">Page 288</p> <p>1 going to be doing? 2 A. Targeted mailing, either on a geography 3 basis or a customer profile basis or a product 4 purchase basis were things we would offer. 5 Q. Isn't customer profile basis or product 6 purchase basis, particularly product purchase 7 basis, the principle means of getting direct mail 8 business? 9 A. It was the lead offer. 10 Q. And didn't it require some sophistication 11 on the part of the sales force to understand 12 product purchase basis direct mail marketing? 13 A. It required knowledge, not sophistication. 14 Q. What kind of knowledge? 15 A. That it could take place and that we could 16 identify customers based on requirements. 17 Q. And how did -- how do you go about doing 18 that? 19 A. I don't understand the question. 20 Q. How do you go about identifying customers 21 based on requirements? 22 A. The manufacturer tells us what their 23 requirements are. 24 Q. But wouldn't you agree with me that selling</p>
<p style="text-align: right;">Page 287</p> <p>1 A. No. 2 Q. And don't you need to understand how you 3 minimize the cost of mailing when you're selling 4 direct mail? 5 A. You do need to understand the cost of 6 direct mail. 7 Q. And don't you need to understand targeting? 8 A. No. You can send direct mail that's not 9 targeted. 10 Q. And why would anybody want to send direct 11 mail that's not targeted? 12 A. For geographic reasons. 13 Q. Do grocery stores want to do that now? Or 14 I'm sorry; do manufacturers want to do that? 15 A. Sometimes. 16 Q. And what's your basis for that? 17 A. They're launching a product in the Boston 18 market and they want to talk to everybody in the 19 Boston market. 20 Q. Were you going to make your \$33 million by 21 geographic mailings? 22 A. In some cases. 23 Q. Wasn't targeted mailing going to be the 24 guts of whatever direct mail marketing you were</p>	<p style="text-align: right;">Page 289</p> <p>1 this kind of direct mail marketing is different 2 from selling the other products that News America 3 Marketing sells to product manufacturers? 4 A. No. 5 Q. That's your opinion? 6 A. Manufacturers distribute coupons to 7 customers. This is just one more avenue. 8 Q. We talked a little bit about Jim Mumm. He 9 was somebody that you hired in New York? 10 A. For the New York market. 11 Q. Right. And this was for retail, right? 12 A. Yes. 13 Q. And in Chicago, you hired Bob Stapler; 14 isn't that right? 15 A. Was he in Chicago? 16 Q. I'm asking you. 17 A. I don't know where he was, but Bob Stapler 18 was hired. 19 Q. And you hired him, right? 20 A. That's right. 21 Q. And he resigned at some point in 2001, 22 right? 23 A. That's right. Yes, he did. 24 Q. There was an individual named Guesswell.</p>

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<p>1 Do you know who he was or she was?</p> <p>2 A. No, I don't remember.</p> <p>3 Q. There was an individual named London. Do</p> <p>4 you know who he was or she was?</p> <p>5 A. I don't remember.</p> <p>6 Q. There was an individual named Robinson. Do</p> <p>7 you remember a Robinson who worked for you?</p> <p>8 A. I don't remember.</p> <p>9 Q. There was an individual named Silk. Do you</p> <p>10 remember a Silk who worked for you?</p> <p>11 A. They reported on the manufacturing side and</p> <p>12 not directly to me on the retail side. They did</p> <p>13 not work on the retail side.</p> <p>14 Q. So are those names familiar to you?</p> <p>15 A. I know the name Terrence Silk, yes.</p> <p>16 Q. So Silk worked under Kevin Tripp?</p> <p>17 A. I believe so.</p> <p>18 Q. How about Robinson?</p> <p>19 A. I don't remember.</p> <p>20 Q. You don't remember Robinson?</p> <p>21 A. No.</p> <p>22 Q. Sellinger?</p> <p>23 A. Chris Sellinger worked for Kevin Tripp.</p> <p>24 Q. Was there someone named London? Does that</p>	<p>Page 290</p> <p>1 role. I don't remember his role.</p> <p>2 Q. You don't remember whether he was retail or</p> <p>3 manufacturing?</p> <p>4 A. Oh, I think he was manufacturing.</p> <p>5 Q. And all of these people came on after CCM</p> <p>6 was acquired in 1999 by News America Marketing,</p> <p>7 right?</p> <p>8 A. But years after.</p> <p>9 Q. Well, I'm just saying after.</p> <p>10 A. Years after.</p> <p>11 Q. There was an individual named -- I'm going</p> <p>12 to spell his name because I'm not sure I could</p> <p>13 pronounce it correctly -- L-A-J-E-U-N-E-S-S-E.</p> <p>14 A. LaJeunesse.</p> <p>15 Q. Okay. Who was he or she?</p> <p>16 A. He was a salesperson.</p> <p>17 Q. In manufacturing?</p> <p>18 A. I don't remember.</p> <p>19 Q. You don't remember whether he was in</p> <p>20 manufacturing or retail?</p> <p>21 A. No, I don't.</p> <p>22 Q. Okay. An individual named Michaels, who</p> <p>23 was he or she?</p> <p>24 A. He worked on the manufacturing side.</p>
<p>1 name ring a bell?</p> <p>2 A. No.</p> <p>3 Q. It doesn't bring a bell at all?</p> <p>4 A. No.</p> <p>5 Q. If London's name was on one of the -- one</p> <p>6 or more of the statements that you received in</p> <p>7 connection with your earn-out calculations as an</p> <p>8 employee whose expense was calculated in terms of</p> <p>9 gross margin, do you --</p> <p>10 A. That might be true. I just don't recall it</p> <p>11 today.</p> <p>12 Q. You don't remember who he was?</p> <p>13 A. No, not today. That may be true at the</p> <p>14 time. Sure.</p> <p>15 Q. An individual named Mason, do you have any</p> <p>16 recollection --</p> <p>17 A. Susan Mason.</p> <p>18 Q. What did she do?</p> <p>19 A. She worked on the manufacturing side.</p> <p>20 Q. Again with Kevin Tripp?</p> <p>21 A. Correct.</p> <p>22 Q. An individual name Gillen, G-I-L-L-E-N, who</p> <p>23 was that?</p> <p>24 A. He was a salesperson, but I don't know his</p>	<p>Page 291</p> <p>1 Q. So another person who was under Kevin</p> <p>2 Tripp, right?</p> <p>3 A. Yes, all these people did not work for</p> <p>4 Kevin Tripp at the same time or for years after the</p> <p>5 company was sold.</p> <p>6 Q. Okay. There was an individual named Brady.</p> <p>7 Who was that?</p> <p>8 A. I don't know.</p> <p>9 Q. Name doesn't ring a bell?</p> <p>10 A. No. Kevin Tripp did not report to me.</p> <p>11 Q. No, I understand. I understand. But all</p> <p>12 this direct mail business, to whatever extent CCM</p> <p>13 was successful or SmartSource Direct was successful</p> <p>14 in landing direct mail business, was calculated as</p> <p>15 revenue for your earn-out, right?</p> <p>16 A. Yes, and -- that is correct, as poor as it</p> <p>17 was.</p> <p>18 Q. Anyway, you don't remember who Brady was?</p> <p>19 A. I do not.</p> <p>20 Q. There's an individual whose name was Henry</p> <p>21 T.H. Does that name ring a bell?</p> <p>22 A. No.</p> <p>23 Q. Do you remember the Giant Stores' loyalty</p> <p>24 card program?</p>

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<p>1 A. Yes.</p> <p>2 Q. This occurred after the acquisition of CCMI</p> <p>3 by NAM?</p> <p>4 A. Yes, it closed afterwards.</p> <p>5 Q. Okay. It's a fair statement that your</p> <p>6 group bungled the Giant Stores loyalty card</p> <p>7 roll-out program; isn't that right?</p> <p>8 MR. RICH: Objection.</p> <p>9 A. I don't believe that's true.</p> <p>10 Q. (BY MR. KATZ) The customer data wasn't</p> <p>11 inputted correctly; isn't that right?</p> <p>12 A. I don't remember the details.</p> <p>13 Q. The customer data wasn't inputted timely;</p> <p>14 isn't that right?</p> <p>15 A. I don't remember the details.</p> <p>16 Q. You do remember that Giant was infuriated</p> <p>17 by the debacle, right?</p> <p>18 A. I remember that Giant raised a question</p> <p>19 about the processes, but I don't remember it being</p> <p>20 considered a debacle and I don't remember them</p> <p>21 being infuriated, so I don't know the answer to</p> <p>22 your question.</p> <p>23 Q. Well, you personally sold the Giant</p> <p>24 program, did you not?</p>	<p>Page 294</p> <p>1 Q. And Giant was a huge account?</p> <p>2 A. Giant was a large account.</p> <p>3 Q. And they were a division of Ahold, right?</p> <p>4 A. That is correct.</p> <p>5 Q. Which is one of the largest grocery store</p> <p>6 chains in the world? Isn't that right?</p> <p>7 A. Not in the world. It's one of the larger</p> <p>8 chains in the United States.</p> <p>9 Q. Okay. Certainly in the United States?</p> <p>10 A. Yes, that's right.</p> <p>11 Q. Stop & Shop is part of Ahold?</p> <p>12 A. It's Ahold, and the answer is yes.</p> <p>13 Q. And the operational work in terms of</p> <p>14 completing the Giant program was something that was</p> <p>15 the responsibility of Mr. Fireman and Mr. Coughlin;</p> <p>16 is that right?</p> <p>17 A. That is correct.</p> <p>18 Q. And it didn't go well; isn't that right?</p> <p>19 A. I don't remember the details of that</p> <p>20 program.</p> <p>21 Q. But you do remember that Giant was very</p> <p>22 upset?</p> <p>23 A. No. What I remember is that we had to find</p> <p>24 multiple ways to get the work done quickly because</p>
<p>1 A. I did.</p> <p>2 Q. And you knew that there was a near</p> <p>3 immediate need for Giant to identify all of the</p> <p>4 card holders because they were going to do drawings</p> <p>5 and give-aways and things of that nature at the</p> <p>6 get-go?</p> <p>7 A. Yes, that's right. Yes.</p> <p>8 Q. And what happened was that a lot of the</p> <p>9 cards were not processed timely so that many of the</p> <p>10 people who had cards couldn't participate in the --</p> <p>11 in the give-aways; isn't that right?</p> <p>12 A. I don't know the answer to that. I do know</p> <p>13 that I told Giant they had to wait a period of time</p> <p>14 before they executed any marketing programs to give</p> <p>15 the data entry houses enough time to build the</p> <p>16 databases. I did give them that direct advice. I</p> <p>17 told them not to do it for a while.</p> <p>18 Q. Right, but they wanted to do it on their</p> <p>19 schedule, right?</p> <p>20 A. Yes, probably. I don't remember.</p> <p>21 Q. That's what the customer wanted; isn't that</p> <p>22 right?</p> <p>23 A. I don't know. I assume. That's what</p> <p>24 you're saying. I don't know.</p>	<p>Page 295</p> <p>1 they had executed promotions and -- against our</p> <p>2 suggestion and we were trying desperately to help</p> <p>3 them get the work done fast enough so that they</p> <p>4 could execute the promotion correctly.</p> <p>5 Q. And then there was the problem with Kroger.</p> <p>6 Do you remember that problem?</p> <p>7 A. I don't know which problem you're speaking</p> <p>8 about.</p> <p>9 Q. Okay. Kroger was potentially a big</p> <p>10 account, many millions of cards, right?</p> <p>11 A. That is correct.</p> <p>12 Q. And Kroger had a specification that</p> <p>13 required the use of Teslin for its cards? Do you</p> <p>14 remember that?</p> <p>15 A. Yes.</p> <p>16 Q. But Bob decided that he could do it cheaper</p> <p>17 if he used a product called PPS-1 from a company</p> <p>18 called Performance Printing?</p> <p>19 A. That is not accurate.</p> <p>20 Q. What's inaccurate about that statement?</p> <p>21 A. Bob did not decide that.</p> <p>22 Q. Who did?</p> <p>23 A. The discussion happened that we went to</p> <p>24 this other company and told them that we wanted to</p>

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1 **make cards; could they bid on cards for Kroger.**
 2 **And we told them that -- the definition was a**
 3 **Teslin card. That's -- that's what happened.**
 4 Q. And so is it your testimony that they told
 5 you that they would use Teslin and they used
 6 something other than Teslin?
 7 **A. I don't recall the details of that**
 8 **conversation.**
 9 Q. Were you involved in the interaction with
 10 Performance Printing?
 11 **A. No, not on a day-to-day basis.**
 12 Q. But did you -- were you involved in
 13 negotiating with Teslin at the outset?
 14 **A. No.**
 15 Q. I'm sorry; negotiating with Performance
 16 Printing at the outset?
 17 **A. No, I was not involved in those**
 18 **negotiations.**
 19 Q. Who found Performance Printing?
 20 **A. I don't recall.**
 21 Q. Was it either Bob, Mr. Fireman, or
 22 Mr. Coughlin?
 23 **A. It could have been.**
 24 Q. It wasn't anybody else, was it?

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1 **programs properly at the point of sale.**
 2 Q. So essentially, the cards were meaningless?
 3 **A. Were not effective.**
 4 Q. Gave them no information?
 5 **A. I don't know about that. I'm not the IS**
 6 **person. I know that they wanted to execute**
 7 **promotions at the point of sale and the cards --**
 8 **there was a problem with reading the card number so**
 9 **they couldn't execute the promotion properly.**
 10 Q. Fair to say that Kroger was very upset?
 11 **A. Very upset.**
 12 Q. And in fact, you were upset --
 13 **A. Yes.**
 14 Q. -- because Kroger was upset?
 15 **A. That is correct.**
 16 Q. And you were upset at Performance Printing?
 17 **A. I was.**
 18 Q. As was everybody else, right?
 19 **A. Yes.**
 20 Q. And you didn't pay Performance Printing,
 21 right?
 22 **A. I was not responsible for paying or not**
 23 **paying Performance Printing.**
 24 Q. Now, Performance Printing ultimately sued

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1 **A. I don't know that.**
 2 Q. It wasn't Henri Lellouche; that's for sure?
 3 **A. I don't know the answer to that.**
 4 Q. Okay. Performance Printing was not
 5 qualified to do this work, were they?
 6 **A. I don't know what that means.**
 7 Q. They did a terrible job? You could agree
 8 on that, right?
 9 **A. I don't know what terrible job means.**
 10 Q. Okay. They -- well, how would you describe
 11 the job they did?
 12 **A. Performance Printing had a manufacturing**
 13 **capability issue.**
 14 Q. Describe it for us.
 15 **A. Performance Printing did not properly put**
 16 **the sequence numbers on the cards.**
 17 Q. And what was the impact of that?
 18 **A. It caused a database problem for Kroger.**
 19 Q. To a layman, explain what the data
 20 processing problem would consist of.
 21 **A. The cards -- the card numbers did not read**
 22 **correctly at the point of sale.**
 23 Q. So what did that mean for Kroger?
 24 **A. It meant that they couldn't execute**

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1 **News America, right?**
 2 **A. Yes, that's actually right.**
 3 Q. And were you involved in the lawsuit?
 4 **A. No.**
 5 Q. Were you deposed?
 6 **A. Yes.**
 7 Q. You gave testimony under oath?
 8 **A. I did.**
 9 Q. But you weren't named as a party in the
 10 case?
 11 **A. I don't think so. I was deposed to give**
 12 **testimony on behalf of NAM.**
 13 Q. Where were you deposed?
 14 **A. Boston.**
 15 Q. Was Mr. Fireman deposed?
 16 **A. I don't know.**
 17 Q. You never talked to him about it?
 18 **A. Not really, no.**
 19 Q. Was Mr. Coughlin ever deposed?
 20 **A. I don't know.**
 21 Q. Now, you complained that NAM was slow to
 22 collect CCMI receivables?
 23 **A. Yes.**
 24 Q. Right?

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<p>1 A. Yes.</p> <p>2 Q. How long were CCMi receivables typically 3 outstanding?</p> <p>4 A. I don't know.</p> <p>5 Q. Then how do you know that NAM was slow to 6 collect CCMi receivables?</p> <p>7 A. Because when I got involved in issues where 8 there was receivables not collected that were 9 sitting out there from 90 to 120 days with some 10 manufacturers like Unilever or one of the other 11 manufacturers.</p> <p>12 Q. Nothing kept you from making collection 13 calls, right?</p> <p>14 A. I'm a salesperson and a marketing person. 15 My job is not to do collections. NAM has an entire 16 organization who was supposed to do that work for 17 us. I didn't even know what the receivables were.</p> <p>18 Q. Nothing kept you from requesting that 19 information?</p> <p>20 A. I did.</p> <p>21 Q. And you got it?</p> <p>22 A. Not often.</p> <p>23 Q. But you always got it when you requested 24 it, right?</p>	Page 302	<p>1 of my time at a senior vice president level to be 2 making calls for collections when supposedly News 3 America Marketing has an entire group of people 4 whose sole responsibility it is to properly collect 5 on time for everyone else?</p> <p>6 Q. But you had an interest in the timeliness 7 of the collection?</p> <p>8 A. I did have an interest.</p> <p>9 Q. And so there was nothing to keep you from 10 making that call, taking five minutes and calling 11 somebody at the limited number of customers that 12 SmartSource Direct had and asking that they pay 13 their bills, right?</p> <p>14 A. Do you know how long a collection call 15 takes?</p> <p>16 Q. Unfortunately, yes.</p> <p>17 A. Are you sure it takes five minutes?</p> <p>18 Q. Generally.</p> <p>19 A. Really?</p> <p>20 Q. And with e-mails, it sometimes takes even 21 less.</p> <p>22 A. Really? Well, I would like to learn about 23 that.</p> <p>24 Q. You complain that Bill Adam was offered a</p>	Page 304
<p>1 A. I got it at the end of our earn-out. At 2 the end of every quarter, we would ask for the 3 information, and we certainly got it at the end of 4 the earn-out calculation because they were required 5 to tell us.</p> <p>6 Q. But you could have requested it six months 7 in advance in anticipation?</p> <p>8 A. We did. We did. We asked for the 9 information.</p> <p>10 Q. And you knew who your customers were, 11 right?</p> <p>12 A. No, sir, I did not, because these people 13 did not report to me, so I didn't know who the 14 customers were.</p> <p>15 Q. You knew who the customers that you sold to 16 were?</p> <p>17 A. I knew the supermarket side. I did not 18 know the receivables and I certainly did not know 19 the manufacturing side.</p> <p>20 Q. But you certainly could have asked somebody 21 to give you a list of these so that you could make 22 some collection calls, could you not?</p> <p>23 A. The answer is I did ask and I did make the 24 calls, but I must say to you that is it a good use</p>	Page 303	<p>1 salary increase to move to Wilton?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Now, nothing in the Stock Purchase 4 Agreement prevented News America Marketing from 5 offering Bill Adam a salary increase, right?</p> <p>6 A. That was not specifically stated in the 7 agreement, but there was a question of integrity. 8 Why on one day would Jon Rubin tell us no salary 9 increases for your people, they're paid properly, 10 and then the next day offer him \$50,000 more to go 11 to Connecticut? Doesn't sound like great integrity 12 on Jon Rubin's part or a representative of the 13 company.</p> <p>14 Q. You allege that Bill Adam focused the 15 majority of his time on SmartSource dot com once in 16 Wilton?</p> <p>17 A. That is correct.</p> <p>18 Q. Didn't this occur, if it occurred at all, 19 after the Aspen system was abandoned?</p> <p>20 A. No.</p> <p>21 Q. Your testimony is that it occurred before 22 the Aspen system was abandoned?</p> <p>23 A. Yes.</p> <p>24 Q. You say that NAM eliminated the Marketing</p>	Page 305

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<p>1 Analysis tool with no other products to replace it?</p> <p>2 A. That is correct.</p> <p>3 Q. What customers were left for Marketing</p> <p>4 Analysis after the Aspen system was abandoned?</p> <p>5 A. I believe Nash Finch. There were several</p> <p>6 customers. Sullivans.</p> <p>7 Q. How much revenue did each of those -- did</p> <p>8 those two clients generate?</p> <p>9 A. I do not recall.</p> <p>10 Q. Can you give me a ballpark?</p> <p>11 A. I can't.</p> <p>12 Q. Under \$200,000 a year?</p> <p>13 A. I don't recall.</p> <p>14 Q. So you can't say it wasn't under \$200,000 a</p> <p>15 year, right?</p> <p>16 A. I can tell you it was more than \$200,000 a</p> <p>17 year. I can't tell you the exact amount.</p> <p>18 Q. Can you tell me if it was more than</p> <p>19 \$300,000 a year?</p> <p>20 A. I don't recall exactly, and I think that</p> <p>21 there is enough conversation in the documents, I'm</p> <p>22 sure you'll find the exact answer that you're</p> <p>23 looking for.</p> <p>24 Q. I'm asking you.</p>	<p>1 retailers. Do you think that going to a retailer</p> <p>2 and telling them starting effective tomorrow you</p> <p>3 have no tool and we have no replacement is</p> <p>4 assisting us in the creation of a long-term</p> <p>5 relationship with a retailer? I think it harmed us</p> <p>6 dramatically. It says invest in software and</p> <p>7 hardware as needed to expand the company's</p> <p>8 business. By eliminating all hardware and software</p> <p>9 as needed, I don't believe that helps us expand the</p> <p>10 company's business.</p> <p>11 Q. Let's back up for a second. You would</p> <p>12 agree, would you not, that the Marketing Analysis</p> <p>13 tool was a limited product?</p> <p>14 A. The Marketing Analysis tool was an</p> <p>15 excellent product built for retailers to solve</p> <p>16 programs.</p> <p>17 Q. But it had limitations?</p> <p>18 A. It did not have limitations for what it was</p> <p>19 built for.</p> <p>20 Q. But you only had two customers?</p> <p>21 A. I don't know that we only had two</p> <p>22 customers.</p> <p>23 Q. After Duane Reade, you only had two</p> <p>24 customers?</p>
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<p>1 A. I'm telling you at the moment I can't give</p> <p>2 you the exact answer.</p> <p>3 Q. And NAM was permitted to eliminate the</p> <p>4 Marketing Analysis tool whenever it wanted under</p> <p>5 Section 6.8, was it not?</p> <p>6 A. No, it was not.</p> <p>7 Q. Where in the agreement --</p> <p>8 A. In our business plan, it states that</p> <p>9 they're supposed to help us achieve the plan.</p> <p>10 Twenty-five percent of our revenue was based on</p> <p>11 having a tool that would do analysis work for our</p> <p>12 customers, for our retailer and manufacturer</p> <p>13 customers. Eliminating the tool automatically</p> <p>14 eliminated our revenue opportunity with no</p> <p>15 replacement, and therefore, continued to harm us in</p> <p>16 our inability to earn our earn-out and with no</p> <p>17 compensation or consideration for that.</p> <p>18 Q. Where in the agreement does it say that?</p> <p>19 A. It says that they have the intention to</p> <p>20 help us drive the business with sales.</p> <p>21 Q. That's all it says, right?</p> <p>22 A. It says that they'll invest -- they'll --</p> <p>23 it says it will assist us, assist us in the</p> <p>24 company's creation of long-term relationships with</p>	<p>1 A. Well, how many --</p> <p>2 Q. You just told me that.</p> <p>3 A. I don't know the answer to that. I did not</p> <p>4 tell you that I only had two customers. You asked</p> <p>5 me what I could recall today and I told you what I</p> <p>6 could recall today as of this moment. I don't</p> <p>7 remember the details.</p> <p>8 Q. You can't remember any more than the two</p> <p>9 customers you identified?</p> <p>10 A. At the moment. There are documents and</p> <p>11 lists that will tell you exactly which customers we</p> <p>12 had and exactly how much revenue we had. At the</p> <p>13 moment, you're asking me and I do not recall at the</p> <p>14 moment, but I know it's sitting in the documents</p> <p>15 and all the other materials.</p> <p>16 Q. And you and Mr. Fireman believed that the</p> <p>17 Marketing Analysis tool needed to be upgraded if</p> <p>18 you were to grow the business, right?</p> <p>19 A. Mr. Fireman and I believed that the</p> <p>20 Marketing Analysis tool could have an additional</p> <p>21 component to the Internet to be poised for future</p> <p>22 growth.</p> <p>23 Q. And Mr. Fireman and Mr. Adam found the</p> <p>24 Epiphany product a more sophisticated product and</p>

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<p style="text-align: right;">Page 310</p> <p>1 recommended that NAM purchase it to upgrade your 2 data hosting business, right?</p> <p>3 A. Mr. Adam and Mr. Fireman recommended the 4 Epiphany product so that our products could port to 5 the Internet. They made a negotiation with 6 Epiphany for just a few hundred thousand dollars to 7 help us directly. It was NAM who took it upon 8 themselves to take the Epiphany product to the rest 9 of the corporation by millions of dollars worth of 10 seats for the company and irregardless of Bob's 11 ability to make a good relationship negotiation 12 with Epiphany. Once Bob selected Epiphany and -- 13 with Bill Adam, he was taken out of all 14 conversations and negotiations with Epiphany about 15 what we needed directly and NAM took it upon 16 themselves to take this tool and expand it to the 17 rest of the corporation and subsequently charge us 18 for that.</p> <p>19 Q. But NAM accepted your recommendation to 20 upgrade the data hosting part of CCMi's business 21 and spent over a million dollars on the Aspen 22 system on hardware features and other features 23 related to Epiphany; isn't that right?</p> <p>24 A. NAM took it upon themselves to spend that</p>	<p style="text-align: right;">Page 312</p> <p>1 technical staff, they -- the system was delivered a 2 year late, had total number of problems with it, 3 and we lost a three-year contract worth millions of 4 dollars at Duane Reade due to the incompetency of 5 NAM's inability. NAM did not have the staff to do 6 the work. They waited for a new CIO to come on 7 board. There were all kinds of problems with lack 8 of support. They did not hire proper staff. They 9 used consultants. They did not have consistency of 10 code. So they did not perform quality support for 11 us to run our business as it related to Aspen.</p> <p>12 Q. And you never got a signed agreement with 13 Duane Reade at any time, did you?</p> <p>14 A. I don't know the answer to that question.</p> <p>15 Q. Come on.</p> <p>16 A. I don't know.</p> <p>17 Q. You never personally saw a signed contract 18 from Duane Reade for the Aspen system, did you?</p> <p>19 A. I don't know.</p> <p>20 Q. You think you might have?</p> <p>21 A. I don't know. I don't have those records.</p> <p>22 I don't know. NAM has all those records. I don't 23 know.</p> <p>24 Q. But you don't remember in all your dealings</p>
<p style="text-align: right;">Page 311</p> <p>1 level of money without counsel from us or 2 participation from us, because they bought 3 additional seats that had nothing to do with CCMi 4 and they charged us for that.</p> <p>5 Q. And they leased space in New Jersey at a 6 facility called Exodus to house what on your 7 recommendation was going to be a significant 8 expansion of the data hosting business; isn't that 9 right?</p> <p>10 A. The data hosting business was for NAM. It 11 was not specifically for CCMi. They did not do 12 that specifically for CCMi.</p> <p>13 Q. Are you sure about that?</p> <p>14 A. I think the data hosting business was to be 15 able to support all of NAM in terms of what they 16 were trying to accomplish, not just for CCMi. They 17 bought multiple seats for NAM to use that, not just 18 for us.</p> <p>19 Q. But wasn't the objective to host at the 20 beginning Duane Reade, Duane Reade's data on the 21 Aspen system? Wasn't Duane Reade identified as the 22 first customer?</p> <p>23 A. Duane Reade was a very important customer 24 for us, and due to the incompetency of NAM's</p>	<p style="text-align: right;">Page 313</p> <p>1 with Duane Reade whether or not you had a contract?</p> <p>2 A. We had a long-term relationship with Duane 3 Reade for multiple years to provide them marketing 4 programs, card programs, and software analysis. I 5 built that relationship with Duane Reade. We 6 launched their card program. It was extremely 7 successful. And it took them an awful lot of time 8 and yelling at us because of our incompetency based 9 on NAM's inability to support that software before 10 they fired us.</p> <p>11 Q. Well, isn't what happened Gary Scharbino at 12 Duane Reade ultimately chose another company to 13 provide its data management services?</p> <p>14 A. Yes, because we failed, not because he was 15 searching for it. There was constant conversation 16 about the fact that the product did not function 17 and that we had -- in fact, you will find in all 18 your documents e-mails to exactly that point 19 requested by Chris Mixson at the time that he was 20 president of the I-Group asking for all the 21 problems. There's documentation that he asked for 22 from Rich Roseman, so you will have that 23 documentation that says that NAM failed to support 24 the Aspen product.</p>

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1 Q. And you have that documentation too, right?
 2 **A. You have it.**
 3 Q. No, but I'm asking you. You have it as
 4 well?
 5 **A. There's an e-mail in our pile of documents**
 6 **that you have.**
 7 Q. Now, you and Mr. Fireman felt betrayed by
 8 Duane Reade, did you not?
 9 **A. No, we felt sad that we lost a**
 10 **long-standing customer.**
 11 Q. Now, the only other customer you got
 12 interested in Aspen was Key Foods, right?
 13 **A. I don't know that.**
 14 Q. Is there any customer other than Duane
 15 Reade that you got interested in Aspen?
 16 **A. I know Key Foods was interested in working**
 17 **with us, but your comment about was it the only**
 18 **other customer, the answer is I don't know that to**
 19 **be true.**
 20 Q. Well, you were the person selling Aspen,
 21 right?
 22 **A. I was not the only person selling Aspen.**
 23 Q. Who else was selling Aspen?
 24 **A. You had Bob Stappler selling Aspen and you**

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1 **gave us to get it to work.**
 2 Q. You learned at some point, did you not,
 3 that many stores did not want to deliver their
 4 customer data to third parties?
 5 **A. I never learned that.**
 6 Q. You learned, did you not, that many stores
 7 were concerned about the security of their data in
 8 the hands of third parties, did you not?
 9 **A. I find that is not the case, and in fact,**
 10 **today, NAM has relationships with stores that**
 11 **represent 18,000 supermarket stores where they pull**
 12 **their data, their files, to do targeted marketing**
 13 **programs 16 years after the sale of the business.**
 14 Q. Right, but that is --
 15 **A. So your comment about third parties using**
 16 **their data is not accurate.**
 17 Q. No, I'm talking about -- there's a
 18 distinction, is there not, between third parties
 19 having what's called a passive tap into someone's
 20 database and a third party actually hosting the
 21 data? Are you -- do you understand what I'm
 22 saying?
 23 **A. EDS hosts millions of records today, so I**
 24 **think your comment is not accurate.**

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1 **had Kevin McKenna selling Aspen and Jim Mumm**
 2 **selling Aspen. There were other people on the**
 3 **retail side who were selling Aspen.**
 4 Q. But they all reported to you, did they not?
 5 **A. Yes.**
 6 Q. And so wouldn't you have known if they had
 7 a customer that was interested in Aspen?
 8 **A. At the time, I probably did know.**
 9 Q. And you don't remember any now?
 10 **A. I don't remember the details at the moment.**
 11 Q. Now, it was your job to try to sell the
 12 Aspen system to other possible customers, right?
 13 **A. Yes, and in fact, I called a forum, a**
 14 **marketing meeting with major retailers to come**
 15 **together for us to have a discussion and to show**
 16 **them the Aspen system from several people across**
 17 **the United States to come to a meeting and that**
 18 **meeting was cancelled.**
 19 Q. You tried to sell the Aspen system, right?
 20 **A. Yes.**
 21 Q. But you just didn't succeed?
 22 **A. We -- it's very hard to sell a system that**
 23 **doesn't function, and it didn't function because of**
 24 **the incompetency and the lack of support that NAM**

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1 Q. I know it, but CCMi is not EDS, right?
 2 **A. I don't understand what that comment means.**
 3 **They're a third party company that could have**
 4 **hosted customer data.**
 5 Q. Let me just say this. A number of
 6 companies built their own data hosting systems;
 7 isn't that right? And when I say a number of
 8 companies, I mean a number of retailers built their
 9 own data hosting systems?
 10 **A. I don't know that to be true.**
 11 Q. Isn't it a fact that Ahold has its own data
 12 hosting system?
 13 **A. I don't know how their data works today.**
 14 Q. And isn't it a fact that Kroger has their
 15 own data hosting system?
 16 **A. No, that's not accurate. Don Humvee hosts**
 17 **their data.**
 18 Q. Who does?
 19 **A. A third party hosts the Kroger data.**
 20 Q. You're sure about that?
 21 **A. Yes.**
 22 Q. What's the name of the third party?
 23 **A. Don Humvee.**
 24 Q. And where are they located?

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<p>1 A. Cincinnati.</p> <p>2 Q. How long have they been hosting Kroger's</p> <p>3 data?</p> <p>4 A. Several years.</p> <p>5 Q. But NAM came to the conclusion that it</p> <p>6 didn't make sense to store the resources in the</p> <p>7 Aspen system; isn't that right?</p> <p>8 A. NAM made the decision to terminate the</p> <p>9 software.</p> <p>10 Q. And that was a conclusion that a reasonable</p> <p>11 business person could make; isn't that right?</p> <p>12 A. No, that's not accurate.</p> <p>13 Q. You think that it was unreasonable on NAM's</p> <p>14 part to make the decision to cease investing</p> <p>15 further resources in customer data hosting?</p> <p>16 A. They didn't invest the proper resources to</p> <p>17 begin with, so they never invested proper resources</p> <p>18 to begin with. They never supported the product</p> <p>19 properly when we were trying to get it to work</p> <p>20 properly, and so they made a business decision</p> <p>21 based on what they believed was the product not</p> <p>22 working. The product didn't work because they</p> <p>23 didn't do the work to make it work. So it wasn't a</p> <p>24 reasonable decision. It was a decision they made.</p>	<p>Page 318</p> <p>1 implication that she was fired for something</p> <p>2 inappropriate is not accurate.</p> <p>3 Q. I'm just asking questions.</p> <p>4 A. Yes, right.</p> <p>5 Q. So tell me more about Pathmark.</p> <p>6 A. So when I found out that the president of</p> <p>7 Catalina was going to see the president of</p> <p>8 Pathmark, I called David DeVoe immediately and said</p> <p>9 we've got to get to Dominick and Dominick needs to</p> <p>10 go with me to see the president of Pathmark to make</p> <p>11 sure that he knows we really want their basis and</p> <p>12 stop Catalina from taking the business away from</p> <p>13 us.</p> <p>14 Q. Was this Pathmark's initial foray into</p> <p>15 loyalty cards?</p> <p>16 A. No.</p> <p>17 Q. Who had been doing Pathmark's business</p> <p>18 prior to that?</p> <p>19 A. We had.</p> <p>20 Q. You had been doing Pathmark's --</p> <p>21 A. Yes, that's right.</p> <p>22 Q. And was this before the acquisition or</p> <p>23 after the acquisition?</p> <p>24 A. I don't recall. I think after.</p>		<p>Page 320</p> <p>1 Q. Now, you talk about at page 14 of your</p> <p>2 interrogatory answers of lost Pathmark business.</p> <p>3 A. Yes.</p> <p>4 Q. What were you referring to here?</p> <p>5 A. Let's see. Yes. Pathmark was putting out</p> <p>6 to bid their card program, millions of cards. We</p> <p>7 were bidding on the cards. The president of</p> <p>8 Catalina called the president of Pathmark and said</p> <p>9 do business with us and don't do business with News</p> <p>10 America.</p> <p>11 Q. How do you know this?</p> <p>12 A. Because I was told.</p> <p>13 Q. By whom?</p> <p>14 A. Someone in Pathmark.</p> <p>15 Q. Who?</p> <p>16 A. One of the buyers.</p> <p>17 Q. Who?</p> <p>18 A. Trish Guccinelli.</p> <p>19 Q. Where is she now?</p> <p>20 A. I have no idea.</p> <p>21 Q. Is she still with Pathmark?</p> <p>22 A. No.</p> <p>23 Q. Okay. Continue.</p> <p>24 A. She left of her own accord, so the</p>	
<p>Page 319</p> <p>1 Q. So Pathmark became a client of News America</p> <p>2 Marketing after the acquisition, obviously, and</p> <p>3 then at some point, Pathmark was going to do</p> <p>4 another project relating to loyalty cards?</p> <p>5 A. They were doing the next big order for a</p> <p>6 year.</p> <p>7 Q. I see. And they were putting this out to</p> <p>8 bid?</p> <p>9 A. Yes.</p> <p>10 Q. And Catalina wanted that business?</p> <p>11 A. Yes.</p> <p>12 Q. And you wanted that business?</p> <p>13 A. Yes.</p> <p>14 Q. And so anyway, you tried to get Mr. DeVoe's</p> <p>15 attention to assist you?</p> <p>16 A. I went to Mr. DeVoe and he went to</p> <p>17 Mr. Porco.</p> <p>18 Q. And then what happened?</p> <p>19 A. Nothing. Dominick said what's going on --</p> <p>20 he called. I said listen, they're going to put a</p> <p>21 lot of pressure on the president of Pathmark right</p> <p>22 now. They're having a meeting tomorrow. I want us</p> <p>23 to go to New Jersey and meet with the president of</p> <p>24 Pathmark and tell him we want to hold on to this</p>	<p>Page 321</p>			

Ann M. Raider

<p>1 business.</p> <p>2 Q. And what happened?</p> <p>3 A. Nothing.</p> <p>4 Q. Do you know how Catalina's bid compared to</p> <p>5 your bid?</p> <p>6 A. Relatively comparable.</p> <p>7 Q. When you say relatively comparable, what do</p> <p>8 you mean?</p> <p>9 A. I believe that our prices were in the same</p> <p>10 range.</p> <p>11 Q. But you never saw their bid?</p> <p>12 A. No, I did not.</p> <p>13 Q. So you can't say you would have gotten that</p> <p>14 business even if you made the trip, right?</p> <p>15 A. I can't commit to it, but I know that I</p> <p>16 didn't get it and we didn't make the trip.</p> <p>17 Q. Did you ever have any conversation with</p> <p>18 anybody at Pathmark afterwards?</p> <p>19 A. Yes.</p> <p>20 Q. Who?</p> <p>21 A. Their buyer.</p> <p>22 Q. What was the buyer's name?</p> <p>23 A. Trish Guccinelli.</p> <p>24 Q. What did she say?</p>	<p>Page 322</p> <p>1 Q. Was there ever a signed contract?</p> <p>2 A. I don't know if it was actually signed.</p> <p>3 Q. Isn't it a fact that at most, you were a</p> <p>4 finalist with Safeway Marketing for this project?</p> <p>5 A. No, that is not true. Safeway Marketing</p> <p>6 was not even involved in the bid process for this</p> <p>7 business.</p> <p>8 Q. How do you know that?</p> <p>9 A. Because there was a list of 14 companies</p> <p>10 and Safeway Marketing was not a part of that.</p> <p>11 Q. How about Black Hawk Marketing?</p> <p>12 A. They were not part of the negotiations, to</p> <p>13 my knowledge, for this piece of business.</p> <p>14 Q. How do you know that?</p> <p>15 A. Because there was a list of companies that</p> <p>16 they interviewed.</p> <p>17 Q. And how did you get the list?</p> <p>18 A. They told everybody who was participating</p> <p>19 in the negotiation -- in the negotiations.</p> <p>20 Q. And were you involved in that?</p> <p>21 A. Yes.</p> <p>22 Q. Personally?</p> <p>23 A. Yes.</p> <p>24 Q. And were you told this at a meeting?</p>	<p>Page 324</p>
<p>1 A. She said that Catalina made it clear that</p> <p>2 they really wanted the business and we did not.</p> <p>3 Q. On page 14 of your interrogatory answers,</p> <p>4 you say CCMI was awarded a \$30 million five-year</p> <p>5 gift card contract to Ahold.</p> <p>6 A. Yes.</p> <p>7 Q. Do you see that? This statement is not</p> <p>8 true; isn't that correct?</p> <p>9 A. No, that is true.</p> <p>10 Q. Neither CCMI nor SmartSource Direct were</p> <p>11 ever awarded such a contract?</p> <p>12 A. We were awarded the business.</p> <p>13 Q. What's your basis for that?</p> <p>14 A. We went through an entire process. We got</p> <p>15 the first piece of Bi-Lo. Ahold told us we had all</p> <p>16 of the stored value programs for the Ahold sister</p> <p>17 companies, and we started the execution.</p> <p>18 Q. Who would you -- who at Ahold told you</p> <p>19 this?</p> <p>20 A. Sharon Wong.</p> <p>21 Q. And where is she now?</p> <p>22 A. I don't know.</p> <p>23 Q. Is she still with Ahold?</p> <p>24 A. No.</p>	<p>Page 323</p> <p>1 A. What?</p> <p>2 Q. Who the other bidders were?</p> <p>3 A. Yes, they told us who was bidding, and we</p> <p>4 actually met some of the people in the hallway as</p> <p>5 we were coming in and they were going out.</p> <p>6 Q. And Safeway Marketing had substantially</p> <p>7 more experience than CCMI in doing supermarket gift</p> <p>8 programs; isn't that correct?</p> <p>9 A. No, they did not.</p> <p>10 Q. Safeway Marketing had done the Safeway</p> <p>11 stores; isn't that right?</p> <p>12 A. I believe so.</p> <p>13 Q. And CCMI hadn't done any large retail store</p> <p>14 with respect to supermarket gift programs?</p> <p>15 A. That's not true.</p> <p>16 Q. Well, what had you done?</p> <p>17 A. We did the gift card for Neiman Marcus. We</p> <p>18 did the gift card for Comp U.S.A. We did the gift</p> <p>19 card for -- the boat company. We did multiple gift</p> <p>20 card programs.</p> <p>21 Q. And how large were those programs?</p> <p>22 A. Large.</p> <p>23 Q. I mean, describe the dollar amount.</p> <p>24 A. I can't. I don't recall the exact dollar</p>	<p>Page 325</p>

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<p>1 amounts.</p> <p>2 Q. So you're not prepared to say just how</p> <p>3 large they were; just in your view, they were just</p> <p>4 large?</p> <p>5 MR. RICH: Objection.</p> <p>6 A. Well, when we were doing all of the gift</p> <p>7 cards for all of the Comp U.S.A. stores. That's a</p> <p>8 lot of gift cards.</p> <p>9 Q. (BY MR. KATZ) Are you sure you were doing</p> <p>10 that?</p> <p>11 A. Am I sure I was doing the gift cards for</p> <p>12 Comp U.S.A.?</p> <p>13 Q. For all of the stores?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Ultimately, CCMC got direct mail business</p> <p>16 from Safeway; isn't that right?</p> <p>17 A. I don't know the answer.</p> <p>18 Q. If CCMC got direct mail business from</p> <p>19 Safeway, that revenue went to CCMC's revenue line;</p> <p>20 isn't that right?</p> <p>21 A. If a retailer was doing a program and we</p> <p>22 had -- and Safeway let us have access to their</p> <p>23 data, they would be included in a manufacturing</p> <p>24 program. I said retailer. If a manufacturer was</p>	<p>Page 326</p> <p>1 Q. Would you be surprised if I told you that</p> <p>2 Mr. Lellouche and Mr. Garofalo also worked on the</p> <p>3 idea?</p> <p>4 A. I'd be very surprised.</p> <p>5 Q. Would you be surprised if I told you that</p> <p>6 Mr. Lellouche, Mr. Garofalo and Mr. Fireman</p> <p>7 presented the idea to various retailers, including</p> <p>8 Kroger and Safeway?</p> <p>9 A. I don't recall any of that.</p> <p>10 Q. Let's talk just a little bit about what the</p> <p>11 program was. This was an idea that struck at the</p> <p>12 monopoly that Western Union has for wiring money,</p> <p>13 right?</p> <p>14 A. I don't know what struck at the idea was.</p> <p>15 Q. Well, it struck at the monopoly that</p> <p>16 Western Union had?</p> <p>17 A. This was a card, a stored value card, that</p> <p>18 enabled people to have a card number that would</p> <p>19 have multiple access to the card.</p> <p>20 Q. Right. And it was -- there was thought to</p> <p>21 be a market for it because Western Union was</p> <p>22 charging excessive prices, right?</p> <p>23 A. There was a market for it because the</p> <p>24 Hispanic market was large and they were wiring</p>
<p>1 doing a program and Safeway chose to participate,</p> <p>2 we would include them in the program and then we</p> <p>3 would get revenue from that, yes.</p> <p>4 Q. And that counted towards your earn-out</p> <p>5 calculation; isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. There's also discussion in your</p> <p>8 interrogatory answers of the proposed stored value</p> <p>9 money cards for the Latin American market. Do you</p> <p>10 remember that?</p> <p>11 A. Yes.</p> <p>12 Q. And the executives at News America</p> <p>13 Marketing liked this idea, did they not?</p> <p>14 A. I don't know.</p> <p>15 Q. Well, this idea was pursued by a number of</p> <p>16 people besides Mr. Fireman at News America</p> <p>17 Marketing?</p> <p>18 A. I don't know that to be true.</p> <p>19 Q. Mr. Lellouche worked on it, did he not?</p> <p>20 A. I don't know that to be true.</p> <p>21 Q. Who do you think worked on this idea?</p> <p>22 A. Bob, solely.</p> <p>23 Q. You don't think anybody else did?</p> <p>24 A. No, I don't.</p>	<p>Page 327</p> <p>1 tremendous amounts of money.</p> <p>2 Q. Right, and they did that through Western</p> <p>3 Union?</p> <p>4 A. I know that they do it -- did some of it</p> <p>5 through Western Union, but I don't know how much.</p> <p>6 Q. And the idea would involve something like</p> <p>7 this, a situation where there would be</p> <p>8 mother/daughter cards, for example, where a</p> <p>9 daughter in the United States could put money on</p> <p>10 her card at a retail store and then a mother in</p> <p>11 Latin America could withdraw money on a companion</p> <p>12 card? That in essence is the idea, right?</p> <p>13 A. I think that's right.</p> <p>14 Q. It involved setting up a network of U.S.</p> <p>15 retailers and U.S. and Latin American banks, right?</p> <p>16 A. I would assume so. I did not work on the</p> <p>17 project. I did not have access to the details of</p> <p>18 the project. Mr. Fireman was the lead on that</p> <p>19 project.</p> <p>20 Q. It was a very complicated project, was it</p> <p>21 not?</p> <p>22 A. I don't believe so.</p> <p>23 Q. Well, it involved accessing the banking</p> <p>24 system of the United States and whatever other</p>

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1 countries money was going to be wired to, did it
 2 not?
 3 **A. That's not -- accessing the banking system**
 4 **is not complicated and Mr. Fireman had a lot of**
 5 **experience in banking and in money transfer prior**
 6 **to joining, so I don't know if it was complicated**
 7 **and I don't know the details of it.**

8 Q. It was so complicated you had to try to get
 9 political support for the idea by meeting with
 10 people at the White House; isn't that right?

11 **A. I don't know that to be true. I know that**
 12 **they had -- I know that they had a meeting with**
 13 **people at the White House, but I don't believe it**
 14 **was so complicated. I believe that they had**
 15 **meeting with people at the White House to gain**
 16 **support for the Hispanic initiative with the**
 17 **president of Mexico. That's all I know.**

18 Q. But wasn't the fact of the matter that
 19 retailers didn't want any part of the idea?

20 **A. I don't know that to be true.**

21 Q. Have you ever heard of something called the
 22 Patriot Act?

23 **A. Yes.**

24 Q. And you're aware that the Patriot Act is

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1 COMMONWEALTH OF MASSACHUSETTS
 2 MIDDLESEX, ss.
 3
 4 I, Marianne R. Wharram, Certified Shorthand
 5 Reporter, Registered Professional Reporter and
 6 Notary Public in and for the Commonwealth of
 7 Massachusetts, do hereby certify that ANN M.
 8 RAIDER, the witness whose deposition is
 9 hereinbefore set forth, was duly identified and
 10 sworn by me and that such deposition is a true
 11 record of the testimony given by the witness.

12 I further certify that I am neither related to
 13 or employed by any of the parties in this action,
 14 nor am I financially interested in the outcome of
 15 this action.

16 In witness hereof, I have hereunto set my hand
 17 this 29th day of May, 2007.

18

19

20 Marianne R. Wharram, CSR/RPR
 21 Notary Public
 22 CSR No. 1426S96

23 My commission expires:

24 August 7, 2009

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1 concerned with things like transferring money
 2 abroad?

3 **A. I don't know the specifics of the Patriot**
 4 **Act. I heard that there is a Patriot Act. I don't**
 5 **know what the details are.**

6 Q. Isn't it a fact that the retailers were
 7 concerned that the whole idea, while it might be a
 8 good one, had all kinds of complications due to the
 9 Patriot Act?

10 **A. I have no knowledge of that detail.**

11 MR. KATZ: We are concluded.

12 (Off the record.)

13 (Whereupon the deposition was adjourned
 14 at 5:19 p.m.)

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Page 333

1 **C E R T I F I C A T E**
 2 I, ANN M. RAIDER, do hereby certify that I
 3 have read the foregoing transcript of my testimony,
 4 and further certify under the pains and penalties
 5 of perjury that said transcript is a true and
 6 accurate record of said testimony, with the
 7 exception of the following corrections listed
 8 below:

9 Page Line Correction

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

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20 _____

21 _____

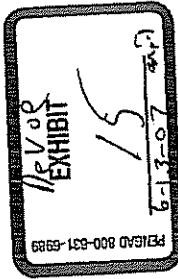
22 _____

23 _____ ANN M. RAIDER

24 Dated this _____ day of _____, 2007.

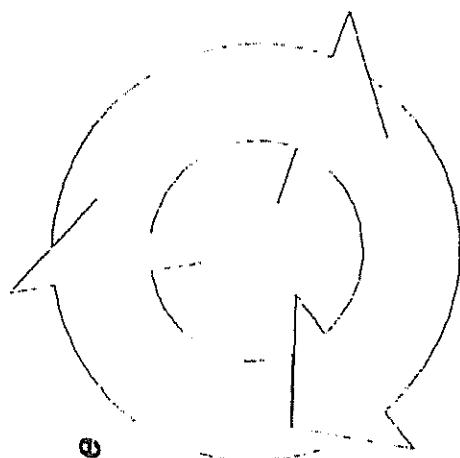
EXHIBIT B

Three Essential Elements



I. Building the Database (Implementation)

- Enroll customers
- Build demographic profiles
- Issue cards



II. Managing the Database (Management)

- Capture purchase data
- Consolidate transactions
- Provide decision support systems

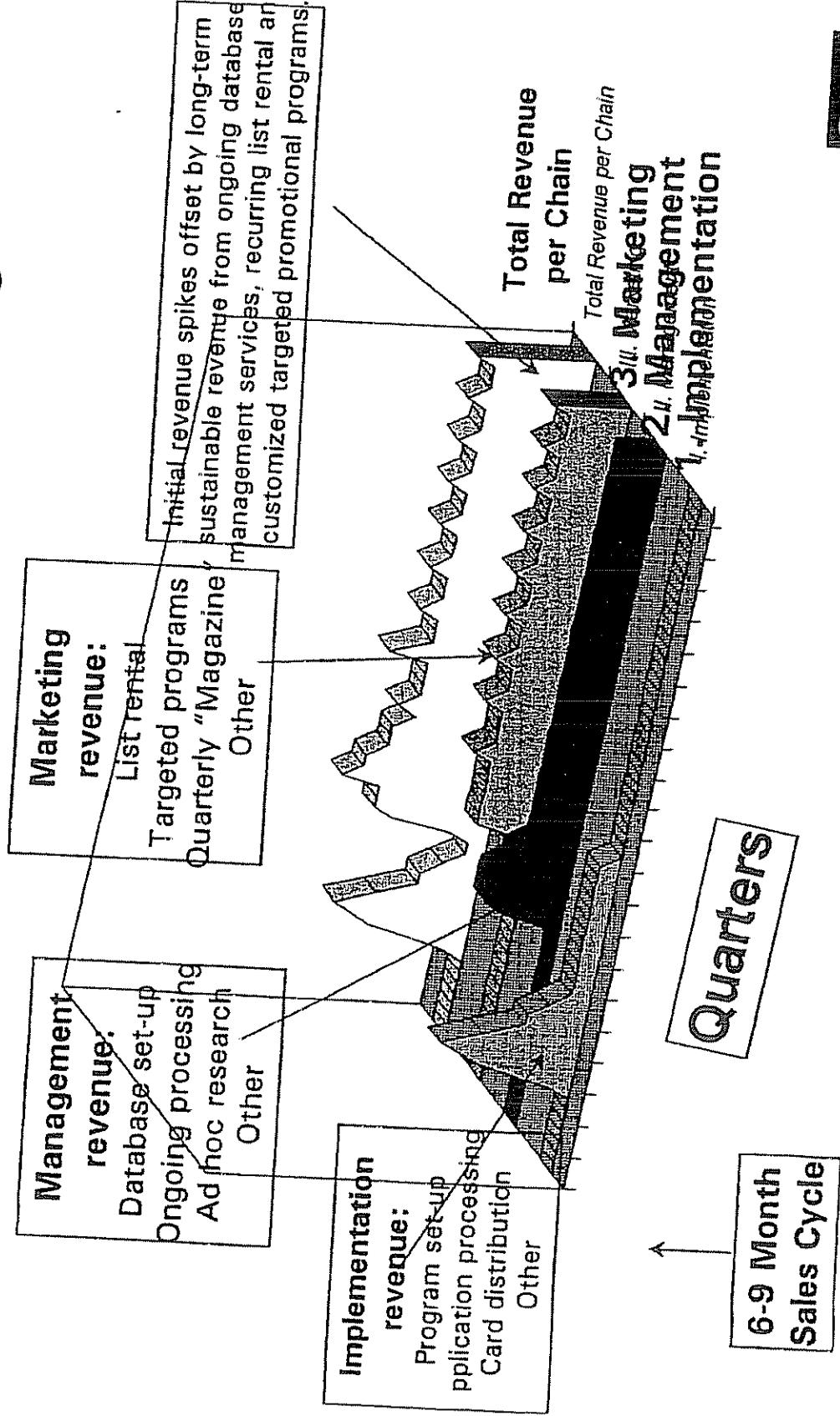
III. Leveraging the Database (Marketing)

- Analyze the data
- Design & execute targeted programs
- ...representing three revenue streams, plus consulting and related services...
- Track the results



Confidential and Proprietary

Three Revenue Streams



Confidential and Proprietary

Database Marketing with Retailers: Revenue Metrics

- **Customer Loyalty and Sales Programs**
 - Targets current spending on various other marketing initiatives
 - Average revenue for fee-based programs per program: \$25k - \$250k
 - Frequent shopper
 - Loyalty/continuity
 - Sales incentives/enhancements
 - Promotion research
- **Cooperative Targeted Promotions**
 - Multiple retailers / multiple manufacturers



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Database Marketing with Retailers: Revenue Metrics

- National Promotional Magazine

- Targets (replaces) the current \$ 7 billion F.S.I. business for supermarkets
- Cooperative promotion vehicle - multiple manufacturers
- Assumptions:
 - 6 MM circulation (6-7 retailers)
 - quarterly distribution, with 20 brand promotion pages per issue
- Annual revenue projection example:
 - 20 pages X \$.03/page X 6,000,000 X 4 (issues/yr) = \$14.4 million

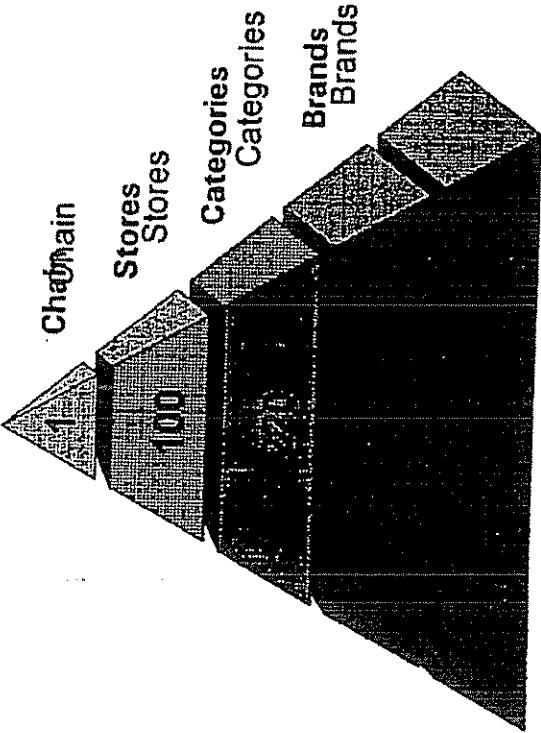


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Database Marketing with Manufacturers: Revenue Metric

Market potential:
$$\begin{matrix} 12,000 & \text{promotions/year/retailer} \\ \times & \text{400} \\ \hline \text{alone)} & \text{retailer chains (FMI data for grocers} \end{matrix}$$

$$= 4,800,000 \text{ promotion opportunities}$$



To meet plan:
Target 19 Chains
1,700 individual promotions



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EXHIBIT C

1 Volume: I
2 Pages: 1 to 255
3 Exhibits: 1 to 11

4
5 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

6 * * * * * * * * * * * * * * * * *
7 ROBERT FIREMAN and ANN RAIDER,
Plaintiffs,

8 vs.

Civil Action
No. 05-1740 MLW

9 NEWS AMERICA MARKETING IN-STORE,
INC.,

10 Defendant.
11 * * * * * * * * * * * * * * * * *

12
13
14 DEPOSITION OF HENRI F. LELLOUCHE, a
15 witness called on behalf of the Plaintiffs, taken
16 pursuant to the applicable provisions of the
Massachusetts Rules of Civil Procedure before Cynthia A.
17 Powers, Shorthand Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the law offices of
Todd & Weld, LLP, 28 State Street, Boston,
Massachusetts, on Friday, May 25, 2007, commencing at
18 8:07 a.m.

19 * * * * *

20
21
22 KACZYNSKI REPORTING
23 72 CHANDLER STREET, SUITE 3
BOSTON, MASSACHUSETTS 02116
24 (617) 426-6060

1 exploring an acquisition?

2 A. No.

3 Q. Was this something that occurred to you
4 just at the time?

5 MR. KATZ: Objection. You can answer.

6 A. I was working in the trade show looking
7 for opportunities as part of my role in the venture
8 group.

9 Q. What group was this and what was its job
10 responsibility?

11 A. The venture group was an entity that was
12 composed of myself, John Rubin, and Heather Harde. We
13 worked directly for the CFO of the company.

14 Q. Who is that?

15 A. David Devoe, Jr. And our job was to
16 identify opportunities, investments, acquisitions, on
17 behalf of News America.

18 Q. What about News America made it
19 interesting to you in terms of a potential acquisition?

20 MR. KATZ: Objection.

21 Q. Pardon me. Thank you. What about CCMI
22 was interesting to you and made it a company worth
23 exploring from your perspective?

24 A. We had interest in working in new

1 technologies and emerging technologies. It was clear to
2 us that loyalty marketing was an emerging technology,
3 marketing technology.

4 Q. Did you have a list of companies that
5 were involved in loyalty marketing at the time you
6 approached Bob Fireman at the trade show in Chicago?

7 A. I didn't have a list. I knew of some.

8 Q. You knew of CCMI prior to the show in
9 Chicago?

10 A. No.

11 Q. So it was introduced to you, the concept
12 or the company was introduced to you in Chicago?

13 A. I believe John Rubin suggested that I
14 meet with Bob. I think John Rubin had known Bob and/or
15 Ann and suggested I stop by and learn more about them.

16 Q. What other companies did you know of at
17 the time that were involved in loyalty marketing?

18 A. Of course there was Catalina Marketing
19 and there was RMS and a host of other small companies
20 that did segments of the industry be they database
21 marketing or card manufacturing or application
22 processing.

23 Q. What companies at the time that you
24 approached Bob Fireman in Chicago did card programs?

1 Q. So of the three entities that were
2 ultimately rolled into the iGroup being CCMI, PlanetU,
3 and Softcard, two of them never got off the ground,
4 Softcard and PlanetU; is that correct?

5 A. Off the ground?

6 Q. Off the ground enough to be revenue
7 generating?

8 A. No, they did not.

9 Q. Was the initial investment in PlanetU \$23
10 million?

11 A. I don't know.

12 MR. PETERS: Off the record.

13 (Recess taken)

14 BY MR. PETERS:

15 Q. Mr. Lellouche, when you were -- let me
16 start over again. We were talking about NAM's interest
17 in acquiring CCMI. You spoke with me briefly about
18 meeting Bob Fireman at a trade show in Chicago. What
19 was the next step in exploring acquiring CCMI?

20 A. I believe I contacted either Bob or Ann,
21 I don't recall, and asked for an invite to come in to
22 see what was going on.

23 Q. Okay.

24 A. And I did do that.

1 Q. Did you speak with anyone about CCMI,
2 anyone on your team?

3 A. I can't recall specifically anything like
4 that.

5 Q. And when you visited CCMI did you meet
6 with both Bob and Ann?

7 A. Yes.

8 Q. Were you trying to find out about the
9 nature of the business?

10 A. Yes.

11 Q. How long did the meeting take?

12 A. I believe I was there for a day.

13 Q. And at that time did you find out that
14 CCMI was in the business of doing loyalty marketing?

15 A. I did.

16 Q. Did you come away with the view that they
17 were one of the pioneers in loyalty marketing?

18 A. I wouldn't say pioneers, no.

19 Q. Do you believe they were one of the
20 pioneers in loyalty marketing?

21 A. Pioneer is a strange word. I believe
22 that they worked in it for a fairly long period of time.

23 Q. By pioneers, I mean those that break
24 ground. Were they one of the ground breakers in loyalty

1 marketing using information collected at the point of
2 sale?

3 A. No.

4 Q. You think there were others that broke
5 that ground before them?

6 A. Certainly.

7 Q. Catalina?

8 A. Without a doubt.

9 Q. Who else?

10 A. Catalina was the behemoth. They
11 overshadowed everyone else.

12 Q. Doing the same type of work that CCMI was
13 doing?

14 A. I don't know they were doing all the same
15 kind of work they were doing, but in terms of collecting
16 data and using that data for the purposes of remarketing
17 it back to consumers, they were well in advance of CCMI.

18 Q. What did you learn about CCMI's business
19 that day?

20 A. I learned the different segments in which
21 they operated. I had the opportunity to visit their
22 facility. I had the opportunity to observe a
23 presentation that I believe Ann made on their
24 capabilities. I think that's the extent of it at that

1 point.

2 Q. What did you believe prior to acquiring
3 CCMI were CCMI's core competencies?

4 A. I believe the core competencies were in
5 the retailer side of the business which is relating to
6 card marketing, card production, application processing,
7 some very modest data hosting, and expertise and
8 understanding of the marketplace.

9 Q. What about the marketplace made them
10 experts; their knowledge, that is?

11 A. Through the presentation I came to
12 understand that they had launched several loyalty
13 programs and that they had ongoing relationships with
14 several retailers, several name plate retailers. They
15 had launched the Lucky program in California, but it
16 was -- most of this was new to me, so I was listening
17 more than commenting.

18 Q. I don't want to necessarily limit you to
19 this one meeting, although I have so far. Let me ask
20 you this. How many meetings did you have to acquire
21 information about CCMI prior to acquiring it?

22 A. I couldn't tell you. As I said, I really
23 passed it on to John Rubin and I exited the process to
24 my recollection. I may have had some, a few more

1 supermarket chains in the country, do you know whether
2 or not Bob Fireman and Ann Raider had met with them to
3 discuss what they had to offer prior to the time that
4 CCMI was acquired by NAM?

5 A. I think they had met with a number of
6 them.

7 Q. And did you talk with Bob and Ann about
8 which grocery store chains those were?

9 A. I'm sure I did.

10 Q. Same question with respect to drug
11 stores, all the major drug stores Ann and Bob met with,
12 did you know that?

13 A. My specific recollection is focused on
14 Duane Reade and the NACDS, National Association of Chain
15 Drug Stores. Beyond that I don't recall any other
16 specific drug chain meetings.

17 Q. And did you do any work to try to figure
18 out where the market was going for the types of services
19 that News America, I should say CCMI, provided?

20 A. We were relying on CCMI's vision and
21 expertise to give us an idea of where the marketplace
22 was going.

23 Q. This is prior to the acquisition?

24 A. Yes.

1 2001.

2 Q. And I take it Mr. Cleary had had
3 extensive experience in loyalty marketing?

4 A. No.

5 Q. I take it he had extensive experience in
6 card programs?

7 A. No.

8 Q. I take it he had some experience in card
9 programs?

10 A. No.

11 Q. I take it he had some experience in
12 loyalty marketing?

13 A. No.

14 Q. How did it make business sense to take
15 away those responsibilities from someone who you've
16 articulated was an expert as compared to anyone else at
17 NAM?

18 A. Did I articulate as an expert?

19 MR. KATZ: I'm not sure he said that.

20 Q. As between you and Bob Fireman who had
21 expertise in loyalty marketing?

22 A. Say that to me one more time.

23 Q. As between anyone at NAM and Robert
24 Fireman, in July of 2001 who had the expertise, who was

1 MR. KATZ: Objection.

2 Q. Do you think that made sense?

3 MR. KATZ: Objection. You can still
4 answer the question if you understand it.

5 A. It made perfect sense to me.

6 Q. How much of your business week was
7 devoted to working on CCMi in 2000 when you first took
8 over?

9 A. I don't know.

10 Q. Half?

11 A. At least.

12 Q. So you went from one hundred percent
13 Softcard to at least fifty percent CCMi?

14 A. I wouldn't say that's the case. I think
15 that, you know, often times at News America you're asked
16 to do more.

17 Q. Is that what happened here? Did your
18 hours increase, for example?

19 A. Hours increased, support increased,
20 breadth of coverage increased.

21 Q. How many hours a week were you working in
22 2000?

23 A. Oh, anywhere from ten to twelve per day,
24 not per week.

1 person at CCMI, what did you do to familiarize yourself
2 with the business?

3 A. Well, I had been attending meetings, and
4 I had been learning as we went along, but I was quite
5 reliant on the direction that Bob and Ann were providing
6 in terms of the strategic plans of the company, vendor
7 recommendations, retailer opportunities, manufacturer
8 opportunities.

9 Q. Okay. So you learned on the job like you
10 did back in the days when you went from Sheraton to Act
11 Media; right?

12 A. Yes.

13 Q. You didn't sit down with Bob Fireman or
14 Ann Raider and get sort of a download of information
15 over a period of weeks, did you?

16 A. Oh, we had constant conversations back
17 and forth.

18 Q. How long after the acquisition did you
19 become the head of CCMI, period of months; right?

20 A. Period of months, probably on or around
21 the time it became SmartSource Direct.

22 Q. So we're talking seven or eight months
23 later?

24 A. That sounds about right.

1 Q. Did you understand that Ann Raider's role
2 at CCMI prior to the acquisition included managing the
3 retailer and manufacturer sales force of CCMI?

4 A. Yes.

5 Q. And after the acquisition she did not
6 have sales staff reporting to her; correct?

7 A. Yes.

8 Q. And after the acquisition she did not
9 manage the retailer and manufacturer sales force; right?

10 A. Sometime after the acquisition.

11 Q. What was the business justification for
12 the decision to remove those areas of responsibilities
13 from Ann Raider?

14 A. At our discretion we opted to reorganize
15 the group.

16 Q. What was the justification other than
17 whim?

18 MR. KATZ: Objection.

19 A. I don't think whim would be a word I
20 would use in any business case.

21 Q. That would be an improper thing to do;
22 right?

23 MR. KATZ: Objection.

24 Q. Make a business decision based on whimsy?

1 A. I don't think it's a relevant term to use
2 in this context.

3 Q. Well, the reason I mention it is because
4 you said at our discretion we changed the
5 responsibilities. That's what you told me; right?

6 A. Correct.

7 Q. My question was, what's the business
8 justification? There must be a business justification
9 other than discretion. What was the business
10 justification?

11 A. Marty Garofalo came over to our group.
12 He was heading up manufacturer sales for both the
13 Internet business as well as the SmartSource Direct
14 business. So it made sense to have Kevin Tripp, who was
15 the sole manufacturing salesperson for SmartSource
16 Direct, report to him. He had twenty years of
17 experience calling on packaged goods companies.

18 Q. Mr. Garofalo did?

19 A. Oh, yeah, and on the retail side it just
20 was a similar situation. I had extensive background in
21 retail sales, and it was just a direction we chose.

22 Q. Did Mr. Garofalo have any experience in
23 loyalty programs, the types of things that you were
24 trying to sell for CCMI?

1 A. No.

2 MR. KATZ: Objection, but you can
3 proceed.

4 Q. And I think you've already told me you
5 didn't have any experience either in loyalty programs,
6 meaning programs relying on data generated at the point
7 of sale; is that correct?

8 A. That is correct.

9 Q. Prior to removing these responsibilities
10 from Ann Raider, did you have any conversation with her
11 about the plan to do so?

12 A. I don't recall.

13 Q. Do you think it made sense to talk to Ann
14 Raider prior to taking these responsibilities away from
15 her to solicit her input or insight?

16 A. I think that the decision to move the
17 sales force supervision to me was a decision that was
18 conveyed to Ann, not discussed with her.

19 Q. My question was, do you think it made
20 sense to discuss this decision with Ann Raider prior to
21 executing it to solicit her insights?

22 A. No, I don't.

23 Q. Get her thoughts?

24 A. No, I don't.

1 Q. Was there any curtailment on the trade
2 shows that she could attend in order to promote CCMI's
3 business?

4 MR. KATZ: Objection.

5 A. No. In fact, she served on the FMI
6 Women's Council which met, I believe, in concurrence
7 with the trade shows.

8 Q. So you don't remember any complaints that
9 Ann Raider had about the inability to exhibit at shows?

10 A. Well, that's two different questions.

11 Q. It may be which is why my client just
12 passed me a note. Was Ann Raider and Bob Fireman, more
13 specifically CCMI, allowed to exhibit at trade shows?

14 A. We exhibited in 2001 at Marketronics,
15 and that was the last opportunity we had to exhibit at a
16 trade show.

17 Q. You don't recall Ann Raider complaining
18 that she wanted to exhibit at trade shows but was
19 precluded from doing so?

20 A. No, that was not the question.

21 Q. But that's the question I'm asking now.
22 Do you remember Ann Raider complaining that she was
23 precluded from exhibiting at trade shows?

24 A. Frequently.

1 Q. What was the business justification from
2 precluding CCMI from exhibiting at trade shows?

3 A. News America's policy is not to exhibit
4 at trade shows or participate in trade associations.

5 Q. Do you know the justification for that
6 policy?

7 A. I do not.

8 Q. Have you ever inquired?

9 A. No.

10 Q. When Ann Raider asked to exhibit at trade
11 shows your response in substance was what you just told
12 me, which is it's the policy?

13 A. Yes.

14 Q. Did you ever explore with senior
15 management the idea that it might be prudent in this
16 emerging market to allow CCMI to exhibit at trade shows?

17 A. No.

18 Q. Do you think that would have been a
19 rational thing to do to explore whether or not News
20 America Marketing's policy made sense in the context of
21 emerging technologies?

22 A. No.

23 Q. You don't think that made sense?

24 A. No.

1 Q. Why not?

2 A. It was a News America policy that was
3 explained very clearly to me, and it was
4 counterproductive for me to challenge management on this
5 decision.

6 Q. Every time someone asks for some
7 additional consideration on the matter, do you consider
8 that to be a challenge?

9 A. No.

10 Q. There is a way for you to go to senior
11 management and say maybe we should revisit this policy
12 in light of the fact that we're dealing with an emerging
13 technology and have that not be a challenge; right?

14 MR. KATZ: Objection.

15 A. I can't speak generally about it.

16 Q. But you didn't approach senior management
17 because you didn't want to challenge senior management;
18 right?

19 A. That's not the case.

20 Q. I'm using the word challenge because it
21 came up in the response that you just gave me. Did you
22 consider raising the issue but declined to raise the
23 issue because you were afraid or concerned that it would
24 be viewed as a challenge to an existing policy?

1 develops?

2 A. Not necessarily.

3 Q. Not necessarily?

4 A. No.

5 Q. Was CCMI allowed to advertise in trade
6 publications?

7 A. No.

8 Q. Why not?

9 A. News America doesn't advertise in trade
10 publications.

11 Q. News America Marketing, News America,
12 News Corp.?

13 A. News America Marketing.

14 Q. That's a policy?

15 A. Yes.

16 Q. And that policy was explained to Ann
17 Raider and Bob Fireman prior to the acquisition?

18 A. I don't know.

19 Q. Did Ann Raider approach you about
20 advertising in trade publications?

21 A. I don't have any specific recollection of
22 that.

23 Q. Do you have any specific recollection of
24 Bob Fireman approaching you about advertising in trade

1 publications?

2 A. I don't have any specific recollection of
3 that either.

4 Q. Did you ever go to senior management to
5 try to determine whether or not in this particular case;
6 that is, the case of CCMI or SmartSource Direct, it made
7 sense to raise awareness about the company and its
8 offerings by publishing advertising in trade journals?

9 A. Say it again, please.

10 Q. Did you ever approach senior management
11 and say in substance maybe we should advertise?

12 A. No.

13 Q. And that's because of this existing
14 policy that was explained to you?

15 A. Yes.

16 Q. Did you think it made sense in the
17 context of CCMI's business to keep it out of trade
18 journals?

19 MR. KATZ: Objection to form.

20 A. Can you say that again, please.

21 Q. Did you think it made sense in this
22 particular context, the context of CCMI, to preclude it
23 from advertising in trade journals?

24 A. It wasn't my call to make. It was a

1 Q. When you say over and over and over again
2 that CCMI had no products, have we justified at least
3 one?

4 A. Not that I would have a 150 percent sales
5 force represent in 1999 when you had a handful of
6 retailers with data available. As I said, it's
7 emerging. It hadn't emerged.

8 Q. It was News America's hope that they
9 would develop that market further?

10 A. I wouldn't say that's true.

11 Q. Okay. News America as far as you know
12 wasn't really concerned about developing the market that
13 now generates eight million dollars?

14 A. No, they were not.

15 Q. How many stores had card programs in
16 2001?

17 A. I haven't the slightest idea.

18 Q. Isn't that something that's important for
19 you to know before you run a business?

20 A. You're asking me 1999?

21 Q. I'm asking 2001, right now, eighteen
22 thousand stores?

23 A. I have no idea.

24 Q. How many stores have loyalty cards

1 be co-located with them to facilitate the deployment of
2 that product.

3 Q. Did you discuss that decision with Ann
4 Raider or Bob Fireman before implementing it?

5 A. I don't recall.

6 Q. Do you recall ever soliciting their input
7 of the wisdom or insight of breaking up that team?

8 MR. KATZ: Objection.

9 A. No.

10 Q. Did Ann Raider tell you that Bill Adam
11 was a critical part of the CCMI team in words or
12 substance?

13 A. No.

14 Q. Did Bob Fireman tell you that Bill Adam
15 was a critical part of the CCMI team in words or
16 substance?

17 MR. KATZ: At any point in time?

18 Q. Prior to moving him off to Connecticut?

19 A. He may have.

20 Q. Did you explore whether or not he was a
21 critical part of the CCMI team?

22 A. I observed that he was a critical part of
23 the CCMI team. One of the reasons I wanted to get him
24 out of that is that I feared flight.

EXHIBIT D

MAY-25-99 15:24 From:NEWS AMERICA PUB

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Holloway
EXHIBIT NO. 1

5-25-07 C

NEWS AMERICA MARKETING

DATE: 5/14/99
TO: JOHN NALLEN, LON JACOBS
CC: PAUL CARLUCCI
FROM: DAVID DEVOE JR. *DM*
RE: CCMI

News America Marketing has reached verbal agreement to acquire CCMI, a company specializing in database marketing and providing customer loyalty programs for retail chains through the frequent shopper programs. The acquisition is strategic in nature as CCMI is the only full service retail loyalty marketing company that has not been acquired over the past year. Catalina Marketing acquired two companies in the past nine months – Market Logic and DCI Card Marketing. The acquisition is also a strategic fit with two other investments that are in negotiation – Softcard Systems and PlanetU.

The business has operated at essentially break even the past three years and most of the asset value is inherent in software development utilized to interface with retailer point of sale systems to segment consumer purchase histories enabling targeted marketing programs from both manufacturers and retailers. The economics of the business are forecasted to improve as a result of new electronic distribution channels that were not available on a wide scale three years ago.

Attached is an overview of the Company along with estimated financial projections of the business over the next five years. We are planning to begin due diligence next week and would like to begin negotiation of a definitive agreement next week as well.

Please let me know when we can review this proposed transaction.

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Acquisition of Consumer Card Marketing, Inc.

1. Business Overview

CCMI was founded in 1992. The Company specializes in database marketing, customer loyalty programs for retailers and targeted marketing programs for manufacturers. CCMI currently offers the following products and services:

- *Loyalty card program implementation* - CCMI provides all of the loyalty card products and services needed to introduce and operate a retail loyalty program (grocery, department stores and others).
- *Database Management* - CCMI offers database management tools, including internally developed software, for marketers that provide easy access to customer purchase data and have the capability to analyze customer-specific purchase data.
- *Consulting and Marketing Programs* - CCMI utilizes actual purchase data provided by retailers to develop effective targeted marketing programs. Data is analyzed using CCMI's advanced software tools to help build programs to meet the various needs of promotions clients (trial, continuity, competitive targets, etc.). CCMI provides turnkey targeted programs, from data analysis and promotion planning, to program execution and results measurement.

Management team: Robert Fireman is the President of CCMI and Ann Raider is Executive Vice President. Both have developed strong relationships with retailers and packaged goods manufacturers based on their expertise in data management and targeted marketing. Ann worked for several years as a group brand manager for Gillette and also spent time in the electronic banking industry.

Recent Financial Results (in thousands)

For years ended 12/31	1996	1997	1998
Revenue	\$2,539	\$7,944	\$4,187
Cost of Goods	1,663	5,298	1,765
Operating Expense	948	2,242	2,209
Net Operating Income	\$(72)	\$403	\$212

Consolidated Balance Sheet

- As of 12/31/98, CCMI had total assets of \$1.9 million, including cash in the amount of \$800K and \$500K of other current assets.
- The Company has current liabilities of \$800K and long term debt in the amount of \$66K.

2. Opportunity for News America Marketing and CCMI

- **Full Service Provider:** CCMI's consulting and marketing services are strategically important because the Company offers highly targetable promotion services not readily available in the retail marketplace today. CCMI's backward integration into database management and loyalty card issuance enables CCMI to offer a full-service solution for clients.
- **Retail Expansion Opportunities:** News America's strong relationships with supermarket retailers and consumer packaged goods manufacturers offer significant expansion opportunities for CCMI. CCMI's efforts with other retail categories can help News America expand into other classes of trade.
- **Targeted Market Expertise:** CCMI's management expertise and specialized software will be an asset to News America Marketing as it attempts to grow its In Store portfolio of highly targeted promotions services.
- **Sales Force Economies:** By leveraging a coordinated sales effort, News America's sales force will be trained to incorporate CCMI's products into its single source portfolio. CCMI will be substantially more profitable and demonstrate increased growth as a subsidiary of News America Marketing.
- **NWS Database Opportunities:** Other businesses within News Corporation may be able to leverage CCMI's database management and marketing programs to enhance their own affinity programs. (Fox Sports, Fox Family, Harper Collins, etc.)

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Projected Results (see appendix for detail)

	Year 1	Year 2	Year 3	Year 4	Year 5
Total Revenue	\$ 13,092	\$ 20,124	\$ 26,256	\$ 30,898	\$ 35,220
Total Cost of Goods	9,358	14,039	17,968	19,514	20,450
Gross Margin	3,734	6,085	8,588	11,384	14,770
Other Expenses	2,372	3,337	4,517	5,130	5,635
Operating Profit	\$ 1,362	\$ 2,748	\$ 4,072	\$ 6,255	\$ 9,135
Percentage	10%	14%	15%	20%	26%
Free cash flow after taxes	146	1,005	1,730	3,009	4,575

Model Assumptions

- Revenue is generated from consulting, database management and loyalty card implementation services.
- Card implementation revenue is based on 850 stores in year 1, growing to 1,800 by year 5 and assumes 10,000 cards per store. Revenue is earned on a per card basis for issuance and data input. Revenue in year 1 is \$4.3 million, growing to \$9.2 million by year 5. This segment has a 25% gross margin.
- Database management revenue is generated from licensing fees of software and data maintenance. It is assumed that 80% of the contracts last for 5 years, with the remainder being 1 year deals. Revenue for year 1 is assumed to be \$1.2 million based on 8 new systems, growing to \$7.8 million by year 5 for 51 total systems, with a gross margin of 74%.
- Consulting revenue is based on targeted direct-mail and electronically delivered promotions. In year 1, consulting revenue is \$7.6 million, growing to \$18.3 million by year 5, with a gross margin of 46%.
- News America's model assumes a valuation range of \$40.7 million to \$58.4 million based on a 15% discount rate and an 8X to 12X EBITDA multiple.
- Based on the deal structure outlined below, News America's model assumes the cost to acquire CCMI is \$9.8 million in total cash payments. These payments have a present value of \$6.6 million using a 15% discount rate.
- Additional capital expenditures are estimated to be approximately \$1.5 million.
- CCMI's Model: The model prepared by CCMI assumes a total of \$70 million in gross margins over 5 years and the achievement of both full bonus payments (see deal structure). Based on these assumptions, the cost to acquire CCMI is \$16.4 million in total cash payments, or a present value of \$10.5 million at a 15% discount rate.

3. Deal Structure

The acquisition of the stock of CCMI has been agreed to based upon the following terms:

- **Up-front payment:** A payment in the amount of \$3 million at closing.
- **Profit Sharing/Earn-out:** For a five-year period from the effective date of contract, CCMI will receive 12% of the gross margin, mutually defined as revenues less the direct cost of goods sold.
- **Bonus payment opportunities:**
 - **Year 1:** If the gross margin for the first 12 month period (estimated to start on October 1, 1999) exceeds \$4 million a \$2.5 million bonus payment will be made; if \$3 million or more, a \$1.5 million payment will be made.
 - **Year 2:** If the gross margin for the second 12 month period exceeds \$9 million a \$2.5 million bonus payment will be made; if the margin is \$7.5 million or more, a \$1.5 million payment will be made.
- **Employment contracts:** Five-year employment contracts including non-compete agreements for CCMI's top management. Agreements include base salary of \$160K, with annual adjustments consistent with company practice, 20% bonus targets, \$900/month car allowance, eligibility to participate in News Corp Stock Option Program and News America benefit program. Further details to be discussed.

4. Timing and Next Steps

- News America Marketing made a verbal offer to CCMI on 5/1/99, which was verbally agreed to by the Company on 5/10/99.
- Over the next month it will be necessary to develop a definitive agreement and complete due diligence.
- CCMI's target closing date is 6/15/99.

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CONSUMER CARD MARKETING, INC. Summary Statements of Profit and Loss		APPENDIX				
		Year 1	Year 2	Year 3	Year 4	Year 5
Revenue						
Implementation						
Grocery		\$ 4,033,150	\$ 6,344,800	\$ 8,555,360	\$ 7,335,600	\$ 8,544,900
Other classes of trade		240,000	254,000	284,000	618,000	648,000
Total Implementation Revenue		4,273,150	6,600,800	8,839,360	7,951,600	9,192,900
Database Management						
Grocery		1,100,700	2,030,000	8,226,221	4,052,400	6,800,023
Other classes of trade		135,000	271,000	474,250	745,250	1,094,000
Total Database Management Revenue		1,235,700	2,310,000	8,700,471	5,798,350	7,767,033
Consulting and Marketing Programs						
Grocery		4,680,000	6,960,000	8,735,000	8,504,000	8,350,000
Other classes of trade		2,800,000	6,044,000	6,769,000	7,544,000	8,400,000
Enhancement programs		100,000	200,000	200,000	400,000	500,000
Total Consulting/Marketing Revenue		7,600,000	12,204,000	10,004,000	17,440,000	16,200,000
Total Revenue		\$ 13,092,350	\$ 20,123,800	\$ 26,255,364	\$ 39,997,600	\$ 36,210,900
Cost of Goods Sold						
Implementation						
Grocery		\$ 3,024,053	\$ 4,000,000	\$ 4,916,520	\$ 5,601,700	\$ 6,408,720
Other classes of trade		180,000	188,000	208,000	307,000	489,000
Total Implementation Costs		3,204,053	4,200,000	5,204,520	5,908,700	6,897,720
Database Management						
Grocery		285,582	515,592	837,432	1,210,718	1,651,724
Other classes of trade		32,900	69,000	115,150	180,900	201,200
Total Database Management Costs		318,482	584,592	952,582	1,391,618	1,852,924
Consulting and Marketing Programs						
Grocery		3,120,000	4,505,000	5,601,000	6,751,000	8,167,000
Other classes of trade		1,760,000	3,110,250	4,113,000	4,255,500	4,275,000
Retail commissions		915,000	1,455,800	1,882,600	1,975,200	1,938,000
Enhancement programs		50,000	100,000	150,000	200,000	250,000
Total Consulting/Marketing Costs		5,685,000	8,250,850	11,310,600	12,223,200	11,330,300
Total Cost of Goods Sold		\$ 9,358,246	\$ 14,038,842	\$ 17,087,702	\$ 19,513,569	\$ 20,450,144
Gross Profit						
percentage		\$ 3,734,005	\$ 6,004,000	\$ 8,000,000	\$ 11,000,000	\$ 16,700,000
		29%	30%	32%	37%	42%
Sales and Marketing						
USA		1,272,108	1,633,368	2,481,720	2,706,943	3,112,039
Depreciation		1,047,300	1,425,200	1,802,201	2,250,101	2,440,777
Total operating expenses		51,000	68,000	71,500	78,500	76,600
operating expenses as a percentage of revenue		1%	1%	1%	1%	1%
Contribution before tax		\$ 1,362,470	\$ 2,747,900	\$ 4,071,822	\$ 8,254,706	\$ 19,134,634
percentage		10%	14%	15%	20%	26%
Gross Profit - Implementation		1,008,200	1,402,200	1,734,400	1,882,900	2,298,240
percentage		25%	25%	25%	25%	25%
Gross Profit - Database Management		920,718	1,720,480	2,059,092	4,206,600	5,042,108
percentage		74%	75%	75%	76%	76%
Gross Profit - Consulting/Marketing		1,745,000	2,953,150	3,891,400	5,214,600	6,621,500
percentage		23%	24%	25%	30%	36%
CCM Projections						
Revenues		7,975,000	21,623,000	31,624,400	40,023,500	65,016,600
Gross Margin		3,191,300	8,000,000	13,560,040	17,977,440	25,914,500
percentage		40%	42%	43%	45%	46%
Revenue variance to NAM model		(6,116,550)	1,499,310	8,000,000	9,765,351	20,716,600
Margin variance to NAM model		(542,625)	2,824,852	4,072,500	6,503,050	11,144,651
Valuation						
Contribution margin		\$ 1,362,470	\$ 2,747,900	\$ 4,071,822	\$ 8,254,706	\$ 19,134,634
Interest tax rate		42%	44%	44%	44%	44%
Contribution margin rate of tax		762,988	1,530,824	2,280,100	3,502,688	5,115,305
Depreciation		51,000	68,000	71,500	73,500	76,600
less: Increases in Non-Cash Working Capital		467,528	551,507	321,607	217,106	210,102
less: Capital expenditures		200,000	250,000	300,000	350,000	400,000
Free cash flow		146,463	1,005,257	1,730,001	3,009,079	4,574,703
Cumulative cash flow		146,463	1,151,720	2,801,721	5,000,000	10,405,663
Year discounted cash flow (no terminal value)		\$ 6.0 million				
		Multiple of EBITDA in millions				
Rate	0	10	12	14		
10%	\$ 40.5	\$ 49.5	\$ 58.5	\$ 68.8		
17.5%	\$ 35.4	\$ 49.7	\$ 51.4	\$ 60.0		
20%	\$ 31.1	\$ 46.4	\$ 48.1	\$ 56.8		

Page 1 of 6

CONFIDENTIAL

CONSUMER CARD MARKETING, INC.
Loyalty Card Implementation

Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5
Common NAM grocery network	15,000				
Stores offering loyalty programs	65%	70%	72%	75%	80%
Participation rate of 12.0%	80%				
Average shoppers per store	10,000				
Percentage of NAM's network serviced	2.0%	4.0%	6.0%	6.0%	7.0%
Corresponding stores serviced	315	432	653	702	840
Retail/Department stores - stores per chain	25				
Chain implementations per year	2	2	3	4	5
CCM grocery stores implemented per year	500	600	700	700	800
Cards per store	10,000	10,000	10,000	10,000	10,000
Revenue per card - issue	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30
Revenue per card - data	\$ 0.18	\$ 0.18	\$ 0.18	\$ 0.18	\$ 0.18
Reader percentage	10%	10%	10%	10%	10%
Over Assumption					
Card costs	\$ 0.23	\$ 0.23	\$ 0.23	\$ 0.23	\$ 0.23
Data entry cost (7¢ per 100 keystrokes)	\$ 0.14	\$ 0.14	\$ 0.14	\$ 0.14	\$ 0.14
Statement of Profit and Loss					
Revenue					
NAM network					
Card products and services	\$ 945,000	\$ 1,226,000	\$ 1,687,500	\$ 2,105,000	\$ 2,520,000
Data entry	657,000	777,000	1,012,000	1,283,000	1,512,000
Residual					
Subtotal		151,200	207,300	270,000	336,500
	\$ 1,512,000	\$ 2,224,800	\$ 2,807,200	\$ 3,658,000	\$ 4,353,500
CCM grocery					
Card products and services	\$ 1,500,000	\$ 1,800,000	\$ 2,100,000	\$ 2,100,000	\$ 2,400,000
Data entry	863,000	1,080,000	1,260,000	1,260,000	1,440,000
Residual					
Subtotal		121,160	240,000	289,000	338,000
	\$ 2,521,160	\$ 3,120,000	\$ 3,648,000	\$ 3,668,000	\$ 4,178,000
Retail/Department stores					
Card products and services	\$ 150,000	\$ 180,000	\$ 225,000	\$ 200,000	\$ 276,000
Data entry	90,000	90,000	125,000	100,000	225,000
Residual					
Subtotal		24,000	24,000	35,000	48,000
	\$ 240,000	\$ 204,000	\$ 254,000	\$ 618,000	\$ 448,000
Total implementation Revenue					
	\$ 4,273,160	\$ 6,608,800	\$ 8,039,200	\$ 7,651,000	\$ 9,102,500
Cost of Goods Sold					
NAM Network					
Card products and services	\$ 700,750	\$ 972,000	\$ 1,265,625	\$ 1,575,500	\$ 1,890,000
Data entry	421,200	603,200	760,375	647,750	1,134,000
Residual					
Subtotal		113,450	165,625	202,500	202,720
	\$ 1,134,000	\$ 1,663,600	\$ 2,100,325	\$ 2,729,750	\$ 3,276,720
CCM grocery					
Card products and services	\$ 1,125,000	\$ 1,350,000	\$ 1,575,000	\$ 1,575,000	\$ 1,800,000
Data entry	676,000	810,000	945,000	945,000	1,000,000
Residual					
Subtotal		99,860	150,000	210,000	262,000
	\$ 1,000,860	\$ 2,340,000	\$ 2,730,000	\$ 2,772,000	\$ 3,132,000
Retail/Department stores					
Card products and services	\$ 112,500	\$ 142,500	\$ 180,750	\$ 225,000	\$ 281,250
Data entry	67,800	87,800	101,250	115,000	188,750
Residual					
Subtotal		19,000	18,000	27,000	35,000
	\$ 100,000	\$ 190,000	\$ 280,000	\$ 387,000	\$ 488,000
Total CCM implementation					
	\$ 3,204,860	\$ 4,206,000	\$ 5,204,520	\$ 5,880,700	\$ 6,894,720
Gross Margin					
	\$ 1,069,200	\$ 1,402,200	\$ 1,724,840	\$ 1,902,900	\$ 2,259,240
Percentage					
	25%	25%	25%	25%	25%

CCM Projections	Revenue	Margin	Percentage
Revenue	\$ 3,770,000	\$ 720,000	25%
Margin	\$ 819,000	1,425,000	25%
Percentage	25%	25%	25%
Revenue variance to NAM model	\$ (97,160)	\$ 91,200	25%
Margin variance to NAM model	\$ (240,200)	\$ 22,800	25%

CONFIDENTIAL

CONSUMER CARD MARKETING, INC.
Database Management

Assumptions	Year 1	Year 2	Year 3	Year 4	Year 5
Client base (assuming 1 system per 100 stores) 50% of card implementations from NAM's store network	2	2	3	4	4
50% of card implementations from CCM's store network	3	3	4	4	4
Additional NAM network percentage Number of systems	15,000	24,000	32,400	41,600	51,200
50% of current year total card implementations % of total new agreements	20%	1	1	2	3
Short term agreement length in months	12				
Long term agreement length in months	60				

In-store systems	Cost Assumptions
Set up fee	50,000
License fee (out of house clients only)	150,000
Clients assumed to be out of house	60%
Hardware (VAR - Exchange license)	20,000
Quarterly main. (out of house clients only)	15,000
In-house systems	
Set up fee	50,000
Monthly maintenance charge	13,000

1 year	5 year	
	Total	Annual
Total revenue for 1 in-store system	\$200,000	\$40,000
Total cost of goods sold	58,200	11,640
Margin	141,800	28,360
Percentage	73%	73%
Total revenue for 1 in-store system	270,000	54,000
Total cost of goods sold	84,250	16,850
Margin	185,750	37,150
Percentage	69%	72%

Statement of Profit and Loss

Revenue	Cost of Goods Sold				
In-store systems					
Grocery	\$ 615,525	\$ 1,173,700	\$ 1,982,232	\$ 2,001,424	\$ 3,560,318
Other classes of trade	83,000	166,000	290,500	456,500	604,000
Total	698,525	1,339,700	2,272,732	3,357,924	4,164,318
In-store systems					
Grocery	480,175	880,180	1,305,833	1,891,685	2,723,715
Other classes of trade	52,500	103,000	163,750	266,750	420,000
Total	540,675	983,180	1,569,583	2,280,435	3,143,715
Total revenue	1,239,200	2,310,890	3,812,474	5,600,359	7,767,033
Cost of Goods Sold					
In-store systems					
Grocery	142,200	266,462	437,934	638,659	881,123
Other classes of trade	10,150	20,200	33,500	50,550	74,000
Total	160,350	302,662	501,234	738,219	1,025,123
In-store systems					
Grocery	142,275	260,130	400,400	572,050	700,601
Other classes of trade	14,000	20,600	51,800	81,400	111,600
Total	156,175	270,730	451,200	653,450	889,201
Total cost of goods	318,450	581,292	952,582	1,391,869	1,924,924
Gross Margin	\$ 920,750	\$ 1,729,698	\$ 2,859,892	\$ 4,205,690	\$ 5,042,109
Percentage	74.3%	74.6%	75.0%	75.7%	75.2%

CCM Projections	Revenue	2,600,000	4,616,000	8,094,000	9,704,000
	Margin	789,750	1,304,000	3,344,000	5,035,200
	Percentage	69%	71%	72%	73%
Revenue variance to NAM model	(169,200)	309,110	803,526	1,205,641	2,018,987
Margin variance to NAM model	(160,068)	174,602	484,008	828,510	1,403,001

CONFIDENTIAL

CONSUMER CARD MARKETING, INC.
Consulting and Marketing Programs

Assumptions		Year 1	Year 2	Year 3	Year 4	Year 5
Direct mail delivery	Revenue	\$ 0.60	100%	95%	90%	70%
	Cost	\$ 0.45				50%
Electronic delivery	Revenue	\$ 0.12	0%	5%	10%	30%
	Cost	\$ 0.02				50%
Grocery			13	20	26	33
Pharmacy/mass merchandise			5	8	12	39
Department stores			2	4	6	20
					8	10

Set up fees

	Coupons	Revenue	Cost	Reach
Short term program	Grocery	1	\$ 80,000	15,000
Long term program	Other	2	\$ 100,000	25,000

Retail commissions

	15%
Stores per program	1,000
Percentage of shoppert reached	5%

Short term program	100% DM	50% Mix	Long term program	100% DM	50% Mix
Revenue	\$ 360,000	\$ 240,000	Revenue	\$ 400,000	\$ 200,000
Cost	240,000	132,000	Cost	250,000	142,500
Retail commissions	45,000	33,750	Retail commissions	45,000	27,000
Margin	75,000	73,750	Margin	105,000	110,500
Percentage	21%	31%	Percentage	26%	35%

General Consulting/enhancement programs

	2	4	6	8	10
Revenue per program	\$ 50,000				
Cost per program	\$ 25,000				

Statements of Profit and Loss

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues					
Grocery	\$ 4,880,000	\$ 8,980,000	\$ 8,726,000	\$ 8,504,000	\$ 8,380,000
Mass merchandise	2,000,000	3,402,000	4,512,000	4,020,000	5,000,000
Department stores	800,000	1,552,000	2,256,000	2,624,000	2,800,000
General/enhancement programs	100,000	200,000	300,000	400,000	500,000
Total	7,580,000	12,204,000	15,804,000	17,448,000	18,280,000
Cost of goods					
Grocery distribution	3,120,000	4,585,000	5,681,000	5,791,500	5,167,500
Mass merchandise distribution	1,250,000	2,153,250	2,742,000	2,782,500	2,050,000
Department stores distribution	500,000	957,000	1,371,000	1,484,000	1,425,000
Retail commission	915,000	1,455,500	1,866,600	1,975,200	1,939,000
General/enhancement programs	50,000	100,000	150,000	200,000	250,000
Total	5,835,000	8,250,850	11,810,600	12,233,200	11,630,500
Margin	\$ 1,745,000	\$ 2,953,150	\$ 3,983,400	\$ 5,214,800	\$ 8,629,500
Percentage	23%	24%	25%	30%	36%

CCMI Projections

Revenue	13,243,000	18,376,400	23,547,900	33,800,500
Margin	5,000,000	8,307,040	10,404,240	12,001,000
Percentage	45%	49%	43%	40%

Revenue variance to NAM model

(3,050,200)	1,030,000	3,572,400	8,099,900	16,540,500
\$ (112,370)	\$ 2,727,850	\$ 4,314,440	\$ 5,249,440	\$ 8,831,800

CONFIDENTIAL

EXHIBIT E

DeVoe, Jr., David F.

June 13, 2007

New York, NY

1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-1740 MLW

- - - - - x

ROBERT FIREMAN and ANN RAIDER, :
Plaintiffs, :
v. : Deposition of:
NEWS AMERICA MARKETING : DAVID F. DEVOE, JR.
IN-STORE, INC., :
Defendant. :
- - - - - x

TRANSCRIPT of testimony as taken by and before
MARGE TEILHABER, Certified Shorthand Reporter
(NJ License No. XI00856; CT license No. 446), NCRA
Registered Diplomate Reporter, and notary public of
the states of New York, New Jersey, and Connecticut,
at the offices of NEWS AMERICA, INC., 1211 Avenue of
the Americas, 3rd Floor, New York, New York, on
Wednesday, June 13, 2007, commencing at 10:10 in the
forenoon.

DeVoe, Jr., David F.

June 13, 2007

New York, NY

75

1 Do you see that?

2 **A.** Yes, I see it.

3 **Q.** Do you know who Bill Adams is?

4 **A.** Yes, I know who Bill Adams is. He
5 was the, I don't know his exact position but I
6 believe he was head of the software development, the
7 IT area of the company.

8 **Q.** Did you share Mr. Beck's opinion that
9 Bill Adams was a key asset of CCMi?

10 **A.** I believe Bill was an important
11 asset.

12 **Q.** I promised we'd return to Exhibit 13.
13 Let's get back to that. The middle of page 2 of
14 Exhibit 13, do you see the reference to the
15 management team?

16 Do you see that?

17 **A.** Yes.

18 **Q.** And you note that Mr. Fireman and
19 Ms. Raider both have developed strong relationships
20 with retailers and packaged good manufacturers based
21 upon their expertise in data management and targeted
22 marketing?

DeVoe, Jr., David F.

June 13, 2007

New York, NY

115

1 A. Yes.

2 Q. What is head count?

3 A. Those would be employees.

4 Q. Okay.

5 And there's a reference in sales and
6 marketing, an expense item for trade shows.

7 A. Yes.

8 Q. And so would you agree with me that
9 you were at least contemplating through the
10 provision of this spreadsheet that the projections
11 in the budgets were as reflected in this document?12 A. These are projections. I'm not sure
13 these are projections that my group did or
14 projections that CCMI proposed that are summarized
15 below.16 I mean they're not agreed-upon
17 budgets. They were projections used to negotiate
18 the earn-out percentage, the gross profit
19 percentage.20 Q. And so regardless of where the data
21 came from, these were numbers that were being used
22 to determine what certain gross margin numbers

DeVoe, Jr., David F.

June 13, 2007

New York, NY

120

1 sales force to mean?

2 A. It's a generic term for our selling
3 organization.

4 Q. Okay.

5 And was it News America's intention
6 at the time it signed this agreement to provide
7 support for CCMI by utilizing the sales force to
8 promote the sale of the company's products?9 A. Yes. The current intention at that
10 time was to promote the sale of the company's
11 products being CCMI's.

12 Q. When did the intention change?

13 MR. KATZ: Objection.

14 A. I'm not aware it changed.

15 Q. So it's your understanding that it
16 was and remains News America's intention to provide
17 support for the business for utilizing New America's
18 sales force in order to promote the sale of the
19 company?20 A. Up until I left the company. I can't
21 speak to after that.

22 Q. And that's a fair limitation.

New York, NY

123

1 NAM's sales staff to market CCMi products?

2 A. I recollect discussion of needing to
3 work with the sales force and try to update them on
4 the products and give them information or training.

5 Q. Did you talk with Ms. Raider or
6 Mr. Fireman or both?

7 A. I don't recall.

8 Q. And there was agreement reached on
9 both sides that that was something that needed to be
10 done?

11 MR. KATZ: Objection.

12 A. I'd say there was an acknowledgement
13 that in order for our sales force to be helpful at
14 all, they would need to have a better understanding
15 of the product.

16 Q. Was there any discussion about the
17 manner in which that would happen?

18 A. No.

19 Q. Not that you recall or no, there were
20 not?

21 A. I don't recall.

22 Q. Now, was NAM's sales force being

DeVoe, Jr., David F.

June 13, 2007

New York, NY

135

1 Q. Now, what did you understand this
2 sentence to mean?

3 A. **Which sentence?**

4 Q. The sentence that begins
5 "Notwithstanding the foregoing," 6.8, page 36.

6 A. It essentially meant that
7 News America Marketing could operate the company as
8 it saw fit. It could basically make decisions and
9 operate the company as it determined was in the best
10 interests of the business.

11 Q. Based on your understanding, could
12 News America Marketing have simply abandoned CCMI's
13 business according to this provision?

14 MR. KATZ: Objection. You're asking
15 for his understanding?

16 MR. RICH: Right, as the person who
17 signed the agreement on behalf of News America
18 Marketing.

19 A. The way I interpret the agreement is
20 yes.

21 Q. Okay.

22 And based on your understanding,

EXHIBIT F

0001

Volume: I
 Pages: 1-354
 Exhibits: 62-141

1

I N D E X

2 DEPONENT DIRECT CROSS REDIRECT RECROSS
 3 ROBERT N FIREMAN
 4 (BY MR KATZ) 11
 5 (BY MR PETERS)

6

E X H I B I T S

8 NO.	DESCRIPTION	PAGE
9 Exhibit 62	8-page Complaint. Fireman v	48
10	Gross	
11 Exhibit 63	4-page Defendant G.C. Lawson Farms.	49
12	Inc Answer. Counterclaim and	
13	Jury Claim	
14 Exhibit 64	6-page Complaint. Fireman v.	50
15	Duke C. Ltd	
16 Exhibit 65	4-page Complaint. Presidential	50
17	Financial Corporation v. Fireman	
18 Exhibit 66	1-page Judgment by Default	51
19 Exhibit 67	23-page Complaint. National Business	52
20	Imaging Systems, Inc. v. Fireman	
21 Exhibit 68	34-page Verified Complaint. BayBank	53
22	Middlesex v. Mandy Trucking, et al.	
23		
24	Continued	

Reporter: Marianne R Wharam, CSR/RPR

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6/5/2007 Depo of Robert Fireman Vol 1

6/5/2007 Depo of Robert Fireman Vol 1

1 A P P E A R A N C E S	1 E X H I B I T S. continued		
2	2 NO	3 DESCRIPTION	4 PAGE
3 TODD & WELD. LLP	3 Exhibit 69	3-page 10 Mass. Attorney Discipline	54
4 (BY KEVIN T. PETERS. ESQ.)	4	Reports 97 Excerpt	
5 28 State Street	5 Exhibit 70	8-page Complaint. American	60
6 Boston. MA 02109	6	Investment Fund, Inc. v.	
7 (617) 720-2626	7	Entertainment Systems Corp. et al	
8 kpeters@toddweld.com	8 Exhibit 71	2-page Agreement for Judgment	61
9 Counsel for the Plaintiffs	9 Exhibit 72	4-page Complaint. Interpros	61
10	10	Consulting, Inc. v. Consumer	
11 HOLLAND & KNIGHT. LLP	11	Card Marketing, Inc	
12 (BY GORDON P. KATZ. ESQ.)	12 Exhibit 73	2-page Answer of the Trustee	62
13 Ten St. James Avenue	13 Exhibit 74	15-page Joint Petition and Motion	63
14 Boston. MA 02116	14	To Confirm Arbitrators' Award	
15 (617) 854-1408	15 Exhibit 75	11-page Verified Amended Complaint	68
16 gordon.katz@hklaw.com	16	And Jury Demand. Fireman v. Blythe	
17 Counsel for the Defendant	17	Selby. Seltech, Inc. et al	
18	18 Exhibit 76	7-page Letter Dated 8/13/1999	69
19 ALSO PRESENT:	19	To Robert Fireman from David DeVoe	
20	20 Exhibit 77	5-page Affidavit of Blythe Selby	71
21 HENRI LELIOUCHE	21 Exhibit 78	2-page Black's Law Dictionary	86
22 JORDAN LIPPNER. ESQ	22	Excerpt	
23	23 Exhibit 79	2-page Press Release	127
24	24	Continued	

1	E X H I B I T S. continued			1	E X H I B I T S. continued		
2	NO	DESCRIPTION	PAGE	2	NO	DESCRIPTION	PAGE
3	Exhibit 80	Handwritten Memo Bates Stamped	184	3	Exhibit 101	e-mail from Mary Ann Mosa to	238
4		FR0512-513		4		Henri Lellouche Dated 6/28/2000	
5	Exhibit 81	Handwritten Notes Bates Stamped	187	5		And Attachment	
6		FR0508-0511		6	Exhibit 102	Letter Dated 9/11/2000 from Bob	238
7	Exhibit 82	e-mail Bates Stamped FR1141	190	7		And Ann to David DeVoe Bates	
8	Exhibit 83	e-mail Bates Stamped FR1920	190	8		Stamped FR5823-825	
9	Exhibit 84	Current CCMi Organization Chart	191	9	Exhibit 103	e-mail Bates Stamped FR6658	239
10		Bates Stamped FR3401		10	Exhibit 104	e-mail Bates Stamped FR0040	241
11	Exhibit 85	Memo Dated 5/27/99 from Dave	193	11	Exhibit 105	e-mail Dated 10/11/2000 from	242
12		DeVoe to Heather Harde Bates		12		Robert Fireman to Henri Lellouche	
13		Stamped NAM03154-3160		13	Exhibit 106	Memo From Bob Fireman to Chris	247
14	Exhibit 86	e-mail from Dave DeVoe to	198	14		Hixson Dated 10/17/2000 Bates	
15		Les Charm Dated 6/23/1999		15		Stamped FR0041-00423	
16	Exhibit 87	Fax Cover Sheet Dated 6/24/99	202	16	Exhibit 107	e-mail Bates Stamped FR1246	251
17		Bates Stamped FR6846-848		17	Exhibit 108	Letter Dated 12/13/2000 from	251
18	Exhibit 88	3-page e-mail String Including	204	18		Robert Fireman and Ann Raider	
19		From Dave DeVoe to Shan Willis		19		To David DeVoe Bates Stamped	
20		Dated 7/12/99		20		NAM01049-051	
21	Exhibit 89	e-mail from Dave DeVoe to Shan	207	21	Exhibit 109	Letter Dated 1/2/2001 from Michael	257
22		Willis Dated 7/12/1999		22		Racano to Robert Fireman and Ann	
23				23		Raider Bates Stamped FR5864-865	
24	Continued			24	Continued		

1	E X H I B I T S. continued			1	E X H I B I T S. continued		
2	NO	DESCRIPTION	PAGE	2	NO	DESCRIPTION	PAGE
3	Exhibit 90	3-page e-mail from Shan Willis	210	3	Exhibit 110	e-mail String. Bates Stamped	259
4		To Charlotte Edelman Dated 8/2/1999		4		FR6659-661	
5	Exhibit 91	Letter Dated 10/22/1999 from Bob	212	5	Exhibit 111	e-mail Bates Stamped NAM01567	260
6		To David DeVoe		6	Exhibit 112	Letter Dated 1/11/2001 from	260
7	Exhibit 92	1-page e-mail from David DeVoe	215	7		Bob and Ann to Michael Racano	
8		To Jon Rubin Dated 11/12/1999		8		Bates Stamped FR 5866-870	
9	Exhibit 93	e-mail String Including From	217	9	Exhibit 113	e-mail from Robert Fireman to	262
10		David DeVoe to R Fireman Dated		10		Henri Lellouche Dated 1/19/2001	
11		11/15/1999 Bates Stamped FR0310-313		11	Exhibit 114	e-mail Bates Stamped NAM 02269	265
12	Exhibit 94	3-page Summary and Next Steps	219	12	Exhibit 115	2000 Performance Appraisal Bates	266
13		CCMI Strategy Session 11/17/99		13		Stamped NAM 000811-817	
14	Exhibit 95	e-mail from Dave DeVoe to Ann	221	14	Exhibit 116	4-page Meeting Minutes 4/24/2001	268
15		Raider Dated 12/7/1999. Bates		15	Exhibit 117	3-page e-mail from Diana Fontaine	269
16		Stamped NAM 03590-593		16		To Henri Lellouche Dated 3/24/2001	
17	Exhibit 96	e-mail Bates Stamped FR0021	223	17	Exhibit 118	e-mail from Robert Fireman to	272
18	Exhibit 97	e-mail Bates Stamped FR0314	224	18		Michael Cleary Dated 6/18/2001	
19	Exhibit 98	e-mail Bates Stamped FR1256	229	19	Exhibit 119	e-mail from Robert Fireman to	273
20	Exhibit 99	Handwritten Memo Dated 4/16/00	231	20		Gary L Franco Dated 6/27/2001	
21		Bates Stamped FR 0330		21	Exhibit 120	e-mail Bates Stamped FR0208	274
22	Exhibit 100	Memo Dated 5/3/00 from Ann Raider	236	22	Exhibit 121	e-mail Bates Stamped FR0567	282
23		To Henri Lellouche Bates Stamped FR0317		23	Exhibit 122	e-mail Bates Stamped FR0165	283
24	Continued.			24	Continued		

1 E X H I B I T S . continued

2 NO	3 DESCRIPTION	4 PAGE
5 Exhibit 123 e-mail Bates Stamped FR0159	6 285	7
8 Exhibit 124 e-mail Bates Stamped FR 0812	9 286	10
11 Exhibit 125 2001 Performance Appraisal	12 294	13
13 Bates Stamped NAM00804-810	14	15
15 Exhibit 126 e-mail Bates Stamped FR 1855	16 302	17
17 Exhibit 127 e-mail Bates Stamped FR 1915	18 303	19
19 Exhibit 128 e-mail String Including	20 304	21
21 From Robert Fireman to Henri	22	23
23 Lellouche Dated 3/29/2002	24	25
25 Exhibit 129 e-mail Bates Stamped FR1910	26 308	27
27 Exhibit 130 e-mail Bates Stamped FR1908	28 309	29
29 Exhibit 131 7-page e-mail from Peter Koo	30 311	31
31 To Henri Lellouche Dated	32	33
33 10/21/2002 and Attachment	34	35
35 Exhibit 132 2002 Performance Appraisal	36 312	37
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1 P R O C E E D I N G S

2 ROBERT N. FIREMAN.

3 a witness called on behalf of the Defendant.
 4 having first been satisfactorily identified by the
 5 production of his Massachusetts driver's license
 6 and duly sworn by the Notary Public.

7 was examined and testified as follows:

8 D I R E C T E X A M I N A T I O N

9 Q. (BY MR. KATZ) Good morning. Mr. Fireman

10 A. Good morning

11 Q. My name is Gordon Katz, and as you know, I
 12 represent News America Marketing. I'm going to be
 13 asking you some questions today. If my questions
 14 call for a yes or no, will you answer yes or no or
 15 I don't know?

16 A. I don't know.

17 Q. If any of my questions are unclear, will
 18 you let me know?

19 A. Yes

20 Q. Only one of us can speak at a time, so will
 21 you let me finish my question before you answer?

22 A. Yes.

23 Q. And let me remind you that you have to
 24 articulate your answer so the court reporter can

10

12

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1 E X H I B I T S . continued

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12 Exhibit 141 e-mail Bates Stamped FR1924	13 321	14

1 take down your response

2 A. I do

3 Q. Okay. You understand that?

4 A. Yes

5 Q. Please state your full name for the record

6 A. Robert Neil Fireman

7 Q. Have you ever used a name other than Robert

8 N. Fireman?

9 A. No

10 Q. Are you married?

11 A. No

12 Q. Have you ever been married?

13 A. No

14 Q. Do you have any children?

15 A. No

16 Q. Ever served in the military?

17 A. No

18 Q. Have you ever been arrested?

19 A. No

20 Q. Have you ever been indicted?

21 A. No

22 Q. Ever been charged with a crime?

23 MR. PETERS: Objection.

24 A. Speeding? Is speeding a --

1 Q (BY MR KATZ) Anything other than
 2 speeding?
 3 A No
 4 Q Have you ever been the subject of
 5 administrative proceedings begun by a governmental
 6 entity?

7 MR PETERS: Objection

8 A I don't recall

9 MR KATZ: Okay And before we go any
 10 further let's just say a word about stipulations
 11 I would propose that all objections except as to
 12 form and all motions to strike be reserved until
 13 the time of trial and that the witness read and
 14 sign his transcript but the signing need not be in
 15 front of a notary Those are the stipulations we
 16 used before I take it they're acceptable?

17 MR PETERS: The only thing I typically
 18 add these days is that the objections can also be
 19 raised in response to a dispositive motion

20 MR KATZ: Sure

21 MR PETERS: I'd like to add that

22 MR KATZ: No objection on that score

23 Q (BY MR KATZ) Can you tell us where and
 24 when you were born?

1 A I worked for Milton Kafka. Kafka. Kafka.

2 Kaufman & Kafka.

3 Q And where were they located?

4 A Water Street. Boston

5 Q And what did you do there?

6 A I was a young attorney Anything they
 7 wanted me to do. I had to do

8 Q How many years were you there?

9 A Just a year.

10 Q And then what did you do?

11 A I went to work for a firm named Ring &
 12 Rudnick

13 Q And where were they located?

14 A Oh originally at 89 State Street. which
 15 doesn't exist

16 Q And how many years were you there?

17 A Four and a half

18 Q And I take it you passed the bar
 19 examination in 1973?

20 A I think it was '4.

21 Q In 1974?

22 A Yeah

23 Q Did you take the bar exam more than once in
 24 order to pass?

1 A Brookline. Massachusetts. September sixth.
 2 1948

3 Q What's your educational background?

4 A Brookline High School. University of
 5 Wisconsin for a BA.

6 Q What year?

7 A '70. 1970. and Suffolk University Law
 8 School. JD

9 Q What year?

10 A '73

11 Q When did you enter the work force?

12 A I had jobs in grammar school. high school.
 13 college. after college

14 Q Okay And what did you do after college?

15 A I went to law school

16 Q And then following law school. what did you
 17 do?

18 A I practiced law

19 Q And where did you practice law?

20 A In Boston. Massachusetts

21 Q Were you part of a firm?

22 A Yes

23 Q Well. let me ask you this. What was your
 24 first job after graduating law school?

1 A Yes.

2 Q So you passed it on your second time?

3 A Yeah.

4 Q Is that a fair statement? And so you were
 5 at Ring & Rudnick during what years?

6 A I'm not good on years. Gordon. so we'll
 7 have to just go -- I just remembered that far I
 8 want to say '75 to '79. but don't hold me to any of
 9 these things. because I have no present memory

10 Q I understand this is to the best of your
 11 recollection --

12 A Yeah

13 Q -- as you sit here on May 24th 19-- or

14 2007. right?

15 A Right

16 Q What were your job responsibilities at Ring
 17 & Rudnick?

18 A I helped with client issues from. you know.
 19 general practice to real estate to litigation I
 20 was a practicing attorney learning everything I
 21 could

22 Q Did you do any corporate work at that time?

23 A Some.

24 Q Did you do any buy/sells of businesses?

1 A Some, yes
 2 Q And who did you -- did you work under any
 3 one particular attorney during your period at Ring
 4 & Rudnick?
 5 A No

6 Q You worked under all the partners at Ring &
 7 Rudnick?

8 A Well, there were four people.

9 Q And who were they?

10 A Jordan Ring, Leslie Rudnick, Michael
 11 Braunstein, myself. I guess maybe one or two
 12 others came and went.

13 Q And after Ring & Rudnick, what did you do?

14 A I opened my own law firm.

15 Q Where?

16 A On School Street.

17 Q What did your practice consist of?

18 A Real estate, general business, some
 19 litigation.

20 Q And where did your clients come from?

21 A Where? They came from Boston, referrals. I
 22 mean, referrals from other attorneys, referrals
 23 from courts.

24 Q What kind of cases were referred to you?

1 Q Okay. Now, you were -- is it a fair
 2 statement that you've continuously been in private
 3 practice since you left Ring & Rudnick in 1979?

4 A Yeah. I mean, I have my bar card and I am a
 5 practicing attorney.

6 Q Okay. And at one point you were on School
 7 Street? Is that a fair statement?

8 A School Street.

9 Q Okay. And at some point you left School
 10 Street and moved your office someplace else?

11 A I think I went to 141 Tremont Street.

12 Q And when did that occur?

13 A Do not remember.

14 Q Can you give me an approximate date?

15 A I'd say in the '80's.

16 Q How long did you stay at 141 Tremont?

17 A I don't know. Five years or more.

18 Q At some point, you moved your office from
 19 141 Tremont to someplace else?

20 A Center Plaza, Three Center Plaza.

21 Q When did that occur?

22 A '80's, late '80's.

23 Q And how long were you at Three Center

24 Plaza?

1 from courts?
 2 A Some defense work.
 3 Q Criminal defense?
 4 A Criminal defense. I volunteered. I was
 5 helping the Boston Legal Assistance Project at the
 6 time. I got some stuff from the housing court.
 7 And then I started to do more business and some
 8 international law, had some clients from overseas.
 9 So we started to -- I got involved with helping
 10 people set up businesses and acquire companies
 11 around the United States.

12 Q Did you ever help people sell companies --

13 A Yeah.

14 Q -- in your -- in your private practice?

15 A Yeah.

16 Q Do you remember any companies which you
 17 helped sell during the period of time you were in
 18 private practice on School Street?

19 A Well, I don't know what's School Street.

20 Q Or wherever your office may have been
 21 located while you were in private practice?

22 A I don't remember right at this moment.

23 Q How long were you in private practice?

24 A Well, I'm still in private practice.

1 A I was there until Lavinthal and Horvath
 2 blew up, that year that they imploded, the
 3 accounting the firm. I was a sublease of them, and
 4 -- was that early '90's? I don't know.

5 Q You don't remember?

6 A No.

7 Q And following the end of your sublease
 8 occasioned by the demise of Lavinthal, where did
 9 you move your office?

10 A Well, at that point I --

11 MR. PETERS: Object to the form of the
 12 question. Go ahead.

13 A We started CCMI. CCMI started in my law
 14 firm at Center Plaza, and at some point in time, I
 15 decided to take that business opportunity and build
 16 a business, so I left the law firm, which was an
 17 association at that point, shared space and things.
 18 We were called Fireman & Orlandi at the time, and we
 19 Roland Orlandi was the former state rep from the
 20 North End. But at some point, I left CCMI and we
 21 moved to family property in Braintree. I left the
 22 law firm to focus on building the business. And we
 23 had some empty space in a warehouse out in
 24 Braintree. So I really focused on the business and

1 we moved to Braintree. and that's why we're here
 2 Q. Okay. Now. Ms. Raider initially had her
 3 office at Three Center Plaza when you started CCMI?
 4 A. I had an office that I had open that was --
 5 we used for things -- the venture I was doing. so I
 6 mean. I don't think she had a formal office there.
 7 She was part-time in the beginning as we tried to
 8 get this thing together

9 Q. Mr. Orlando. was he your partner?
 10 A. In name only.
 11 Q. Did you have any associates who worked with
 12 you?

13 (Interruption at door)
 14 (Mr. Lippner enters deposition)
 15 (Off the record.)
 16 Q. (BY MR. KATZ) We were talking about your
 17 law firm. Fireman & Orlando. and I had asked you if
 18 Mr. Orlando was your partner

19 A. Yes.
 20 Q. And your answer was that he was?
 21 A. Yes.
 22 Q. Did you have any other partners besides
 23 Mr. Orlando during the period of time --
 24 A. No

1 A. Sorry
 2 MR. PETERS: Bob thought it was him.
 3 Q. (BY MR. KATZ) You told us that you were in
 4 the private practice of law before CCMI. right?
 5 A. Yes
 6 Q. Okay. And that you've really continuously
 7 been in the private practice of law from 1974 to
 8 the present. correct?

9 A. Correct
 10 Q. Okay
 11 A. And continue to be in the private practice
 12 of law --
 13 Q. Yes.
 14 A. -- to the present
 15 Q. To the present. And you told us that CCMI
 16 started while you were in your law office at Three
 17 Center Plaza. correct?
 18 A. Yes.
 19 Q. Okay. And at some point. your activity.
 20 your time became much more focused on CCMI? Fair
 21 statement?
 22 A. Correct
 23 Q. Okay. And ultimately. you sold CCMI. as we
 24 know. to News America Marketing. right?

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 1 Q. -- you had the Fireman & Orlando firm?
 2 A. No
 3 Q. Did you have any associates?
 4 A. It was -- there were lawyers in the suite
 5 and we were all independents
 6 Q. Did you use the services of any of the
 7 other lawyers?
 8 A. Oh. sure
 9 Q. On work that you generated?
 10 A. Sure
 11 Q. And you were telling us that in the early
 12 1990's. you created CCMI right?
 13 A. Correct
 14 Q. Would you continue to tell us what jobs you
 15 had during the CCMI period and afterwards?
 16 MR. PETERS: Objection
 17 A. I don't understand what jobs --
 18 Q. (BY MR. KATZ) Okay. let me --
 19 A. What is a job?
 20 Q. Well. let me back up a second
 21 A. Jobs as in --
 22 MR. PETERS: Wait. wait
 23 Q. (BY MR. KATZ) Only one of us can talk at a
 24 time

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 1 A. Correct.
 2 Q. And you had an employment agreement with
 3 News America Marketing. right?
 4 A. Correct
 5 Q. We'll get into that in more detail later
 6 And then at some point. in approximately 2004. you
 7 left News America Marketing. correct?
 8 A. I was no longer there.
 9 Q. Okay
 10 A. Whether I left or was asked to leave is a
 11 whole other question.
 12 Q. What did you do following your cessation of
 13 employment by News America Marketing?
 14 A. Well. I had -- I opened -- I went into a
 15 friend's office in Weston. Massachusetts
 16 Q. And who is the friend?
 17 A. A fellow named Robert Bickford
 18 Q. And what did you do there?
 19 A. Well. I continued to work on some of the
 20 ideas in card marketing. Robert Bickford had a
 21 company that had a Visa platform
 22 Q. What is the name of the company?
 23 A. Compass Cards
 24 Q. And what did you do?

1 A Well, I wasn't working. I mean, I was
 2 trying to help him build ideas for the use of
 3 private label debit cards

4 Q Were you --

5 A And when I was -- when I was asked to not
 6 -- when I was told I couldn't come to the News
 7 America office any more, notwithstanding my
 8 employment agreement, I went there to try to
 9 continue to do some of the work that I was doing
 10 for News America Marketing

11 Q And when would you date your first going to
 12 Mr. Bickford's office in Weston?

13 A Oh, I don't know 2004

14 Q When in 2004?

15 A Whenever I was told I couldn't come to work
 16 any more

17 (Mr. Lellouche enters deposition)

18 MR. PETERS: Will Mr. Lellouche be
 19 introduced on the record?

20 MR. KATZ: Mr. Henri Lellouche has just
 21 entered the room

22 MR. PETERS: Mr. Lellouche is a witness
 23 in a deposition tomorrow. I understand Mr. Katz's
 24 position that he's the corporate representative for

1 Q Is Stored Value Partners still in
 2 existence?

3 A I don't know

4 Q Well, was Stored Value Partners a
 5 revenue-producing entity?

6 A Not at that time.

7 Q At any time?

8 A Later on it had some customers

9 Q How much revenue do you believe Stored
 10 Value Partners has made in the entirety of its
 11 existence?

12 A You'd have to ask Mr. Bickford, but not --
 13 less than a hundred thousand dollars I don't
 14 know; a hundred thousand plus or minus

15 Q Are you still actively involved with Stored
 16 Value Partners?

17 A No

18 Q And when did you cease being involved with
 19 Mr. Bickford and Stored Value Partners on an active
 20 basis?

21 A Well, I left there about a year ago
 22 November, so when would that be?

23 Q So that would be November 2005?

24 A Five, yeah.

1 News America I take it, then, that Mr. Lippner is
 2 here as an attorney on this litigation. I
 3 personally don't think it's appropriate for Henri
 4 to be in the room, he's not a party, but I'll just
 5 reserve my right and make the statement on the
 6 record. If he is the corporate rep for News
 7 America, I trust that he will be the corporate rep
 8 for all such depositions from this point forward,
 9 including trial.

10 MR. KATZ: He is a corporate rep. I'm
 11 not going to belabor the conversation any further
 12 on this subject.

13 MR. PETERS: No, I don't intend to.
 14 either

15 Q (BY MR. KATZ) You were telling us,
 16 Mr. Fireman, before Mr. Lellouche entered, about
 17 your joining Mr. Bickford in his office in Weston?

18 A That's correct.

19 Q Did you have some entity having the name
 20 Stored Value?

21 A Stored Value Partners is something we
 22 created.

23 Q Tell me what Stored Value Partners is
 24 A It was just a d/b/a.

1 Q And what have you done since then?

2 A I started a new entity.

3 Q What's the name of the new entity?

4 A Account -- it's called Accounts Receivable
 5 Management Solutions, ARMS.

6 MR. PETERS: Mr. Fireman, before you
 7 respond to any questions about what this company
 8 does, feel free to talk to me about whether or not
 9 you believe it's proprietary, because I want
 10 something in the nature of a protective order to
 11 cover what you disclose in answer to Mr. Katz's
 12 questions.

13 Q (BY MR. KATZ) Let me ask you first, why
 14 did you leave working with Mr. Bickford in
 15 connection with Stored Value Partners?

16 A To start a new entity.

17 Q Did the lack of success of Stored Value
 18 Partners have any effect on your decision to start
 19 a new enterprise?

20 MR. PETERS: Objection.

21 A No.

22 Q (BY MR. KATZ) Did you have --

23 A I didn't say a lack of success. I didn't
 24 categorize it. You did.

1 Q I agree, but I'm just asking the questions

2 A No, no, I --

3 Q What was it that made you turn your
4 attention to an altogether different venture?

5 A It was an opportunity some friends of mine
6 wanted to get involved in and I decided I would do
7 it

8 Q And you'd agree with me that this Accounts
9 Receivable Management Systems venture has
10 absolutely nothing to do with the business of
11 Stored Value Partners?

12 A Oh, I agree

13 Q Totally different kind of business?

14 A Totally different

15 Q And who were the friends that asked you to
16 get involved with them with respect to Accounts
17 Receivable Management Systems?

18 A John Levine and Angel De la Cruz No one
19 related to the past, if that's --

20 Q Okay Where does Mr. Levine live?

21 A He lives in Canton

22 Q And where does Mr. De la Cruz live?

23 A Waltham

24 Q And where is the office, if there is one.

1 A I find the question overbroad, but --

2 there's two things I'm doing with my life?

3 Q Your professional life

4 A You could say that's what I -- the main --
5 yes, fine. Yes.

6 Q Are there any other things that you're
7 doing with your professional life that aren't
8 included in my question?

9 A Not within -- anything else is within those
10 two entities

11 Q Okay. And how much time do you spend
12 practicing law relative to how much time you spend
13 working on Accounts Receivable Management Systems?

14 A It varies day-to-day

15 Q Over an average week, how would you break
16 it down?

17 A There's no average

18 Q What kind of work, legal work is Fireman &
19 Associates doing?

20 A General litigation practice.

21 Q Okay. So it's principally litigation that
22 you're doing?

23 A Not me, but the other people

24 Q Are they doing most of the legal work?

1 of Accounts Receivable Management Systems?

2 A Needham

3 Q Where in Needham?

4 A 145 Rosemary Street, Needham,
5 Massachusetts.

6 Q And it's out of this office that you work
7 today?

8 A Yes

9 Q And do you conduct your law practice out of
10 that office as well?

11 A Yes. I've set up a law firm called Fireman
12 & Associates.

13 Q Do you have any lawyers working with you?

14 A Yes

15 Q And who are they?

16 A Francis Gamarri, Iris Miller, Liz --
17 Elizabeth --

18 Q Is there a Liz?

19 A Elizabeth Manos, M-A-N-O-S

20 Q So is it a fair statement that there are
21 two things that you're doing with your professional
22 life right now; one is practicing law and the other
23 is working for this entity called Accounts
24 Receivable Management Systems?

1 A Yes

2 Q Okay. And what kind of litigation work are
3 they doing?

4 A It's involving collecting money for
5 hospitals, insurance companies, against insurance
6 companies

7 Q So it's essentially collection work? Is
8 that a fair statement?

9 A Well, it's specializing in no fault
10 insurance, workers comp, statutory collection work

11 Q Is there a relationship between your
12 practice and Accounts Receivable Management
13 Systems?

14 A Yeah, Accounts Receivable is a specialized
15 billing and collection service specializing in
16 those areas

17 Q What do you consider to be your
18 professional strengths?

19 MR. PETERS: Objection. Are we talking
20 about the practice of law now, Gordon?

21 MR. KATZ: No, in general.

22 MR. PETERS: Well, that doesn't answer
23 my objection, but you can answer

24 A My strength -- it's good to see you, Henri.

1 I think my strengths are understanding people.
 2 business concepts. use of what the elements of
 3 success. understanding legal concepts. business
 4 concepts. growth. marketing. I've been involved in
 5 lots of different types of industries and help
 6 clients and family and friends be successful in
 7 whatever they're doing. or to try to help them if
 8 they get into problems and advise them of options.
 9 alternatives and things like that

10 Q Anything else?

11 A Probably. but not that I can think of right
 12 now

13 Q What do you consider your professional
 14 weaknesses?

15 MR. PETERS: Objection.

16 A I don't consider them

17 Q (BY MR. KATZ) Do you think you have any?

18 MR. PETERS: Objection.

19 A I don't want to speculate

20 Q (BY MR. KATZ) You can't think of any as
 21 you sit here today?

22 A Well. I think I'm overly trusting of people
 23 sometimes --

24 Q Anything else?

1 organizational legal accounting systems. making
 2 sure they have the proper accountants and how
 3 everything ties together. Am I running over? What
 4 was the question?

5 Q Just asking you to describe your management
 6 --

7 A So -- right I have

8 Q Only one of us can that talk at a time
 9 I'm just asking you to describe your management
 10 experience up to today

11 A I help people -- one of the predecessors of
 12 this whole CCMI was helping people organize concept
 13 around a new technology and how to manage it and
 14 grow it. You know we were involved in the
 15 development of affinity marketing credit card
 16 industry. how to define a product. how to figure
 17 out its essential unique properties. how to
 18 introduce it to organizations and industries and
 19 customers. so I think I have wide experience of
 20 organizing people from card businesses to real
 21 estate businesses to international businesses. On
 22 behalf of some clients of mine. I managed the
 23 development of office towers and shopping centers
 24 and real estate development. I was probably

1 A -- and that's caused problems for me
 2 Q Besides you're overly trusting of people
 3 sometimes. can you think of any other professional
 4 weaknesses?

5 MR. PETERS: Objection

6 A Not right now

7 Q (BY MR. KATZ) Okay. Can you briefly
 8 describe for us what management experience you've
 9 -- you have or have had?

10 MR. PETERS: Objection

11 A In my life?

12 Q (BY MR. KATZ) Yes. since law school

13 A Well. I mean. I was heavily involved in
 14 managing the original law firm. Ring & Rudnick

15 Q Even though you were the most junior
 16 person?

17 A Well after a year. I was a senior person

18 Q Okay

19 A Understanding the things needed to be
 20 organized and set up systems and nomenclatures and
 21 reporting systems and organizational things. and
 22 then for clients. I've helped many people set up
 23 lots of businesses and make sure they have the
 24 elements of how to run them from a corporate

1 involved in the sale of hundreds of millions of
 2 dollars worth of real estate with people from all
 3 sorts of countries

4 Q As their counsel?

5 A As their counsel.

6 MR. PETERS: Can he finish his answer
 7 before he gets on to the next one? I just think
 8 it's going to be difficult to follow the answer if
 9 we interrupt the response.

10 A I was involved with management of coal
 11 mines in West Virginia and Kentucky.

12 Q (BY MR. KATZ) In connection with your law
 13 practice?

14 A Law practice. If you can manage a coal
 15 mine in West Virginia. you can manage almost
 16 anything. Gordon. but you know. from personnel
 17 finance. from operations. from dealing with the UMW
 18 strikers and -- so I mean. I have -- that's
 19 general

20 Q Did you manage the Buffalo Creek coal
 21 mines?

22 A No

23 Q You had nothing to do with that?

24 A No. never heard of it

1 Q Any other management experience?
 2 A Probably lots of them, but you're talking
 3 since 1974 I've been involved in a lot of
 4 different things. I've helped my family organize
 5 businesses and sell businesses. I've helped my
 6 cousin, helped with the formation of Reebok and its
 7 success. My uncle is involved in international
 8 businesses and I've done work with him from time to
 9 time. I had an uncle that developed the largest
 10 gasoline network in New England, Gibbs Oil Company,
 11 so I've been exposed to operations and management
 12 in a variety of industries at small levels from a
 13 donut shop, bagel store to multinational
 14 situations.

15 Q Ever taken any courses on management?

16 A After law school, no.

17 Q Ever taught any courses or seminars on
 18 management?

19 A No.

20 Q Are you the member of any professional
 21 societies?

22 A I used to be ABA. I don't know if I've
 23 formally joined that again.

24 Q You can't think of any professional

1 bell?

2 A Benefits Plus? That has a ring to it.
 3 Q Would it surprise you if I told you that
 4 you are listed or have been listed in the Secretary
 5 of State's office as the secretary of AEI
 6 Associates, Inc.?

7 A Yes.

8 Q And there's an address listed of 306 Beacon
 9 Street in Boston. Does that address have any
 10 familiarity to you?

11 A I lived there. I mean, AEI -- that's my
 12 former residence.

13 Q You don't live there now?

14 A No.

15 Q But you don't remember AEI Associates,
 16 Inc.?

17 A Not right this second, no. What did AEI
 18 stand for?

19 Q I don't know. I'm asking you.

20 A I don't remember. I mean, I -- I was -- in
 21 my legal practice, I -- I had sometimes took
 22 corporate roles in some of the articles of
 23 organization that were formed.

24 Q But you don't remember anything about AEI.

1 societies that you've been a member of other than
 2 the ABA at one time?

3 A Mass Bar Association, Wisconsin Alumni
 4 Association.

5 Q Anything else?

6 A No.

7 Q You're a member of the Massachusetts bar?

8 A Yes.

9 Q Are you a member of the bar of any other
 10 state besides Massachusetts?

11 A No.

12 Q Okay. And you've continuously been a
 13 member of the Massachusetts bar since you passed
 14 the bar in 1974, correct?

15 A Yes.

16 Q Do you invest in the stock market?

17 A I have.

18 Q Okay. Have you heard of an entity called
 19 AEI Associates, Inc.?

20 A No.

21 Q American Investment and Mortgage Company.
 22 Does that name ring a bell?

23 A No.

24 Q Benefits Plus, Inc.? Does that name ring a

1 Associates, Inc. --

2 A No.

3 Q -- as you sit here now? And let me ask you
 4 about American Investment and Mortgage Company,
 5 Inc. Do you have any recollection of American
 6 Investment and Mortgage Company, Inc.?

7 A No.

8 Q And again, you are listed as the secretary,
 9 or have been listed as the secretary of that entity
 10 in the Massachusetts Secretary of State's office
 11 Does that ring a bell?

12 A No.

13 Q And let me again draw your attention to
 14 Benefits Plus, Inc., and here again, you were
 15 listed, according to the Secretary of State's
 16 offices, as the secretary or having been the
 17 secretary of Benefits Plus, Inc. Can you confirm
 18 or deny that fact?

19 A No.

20 Q You have no recollection of Benefits Plus,
 21 Inc., at all?

22 A That name rings a bell, but I don't right
 23 now remember what it was or when it was.

24 Q You don't remember any involvement with

1 Benefits Plus Inc ?

2 MR PETERS: Asked and answered
 3 Q. (BY MR KATZ) Let me turn to another
 4 entity for which you're listed as secretary or have
 5 been listed as secretary in the Secretary of
 6 State's office. and that entity is Contractors Plan
 7 Association Inc Does that entity ring a bell
 8 with you?

9 A. No.

10 Q. Let me turn to another entity for which you
 11 either are or have been listed as the secretary
 12 with the Massachusetts Secretary of State's office.
 13 That entity is called Credit Store Inc Does that
 14 entity ring a bell with you?

15 A. Credit Store Inc ? What years are these.
 16 Gordon?

17 Q. I don't know I'm asking you.

18 A. Credit Store Inc rings a bell. That
 19 could have been a company that we -- we did -- I
 20 did some work with the insurance -- marketing of
 21 insurance We had some entity I don't remember
 22 Credit Store Inc

23 Q. Were you a shareholder of the Credit Store.
 24 Inc ?

1 A. No If it's the thing I'm thinking of and
 2 that's the Credit Store. it -- we didn't get it
 3 going.

4 Q. You are listed or have been listed at the
 5 Secretary of State's office as the president of a
 6 company called Entertainment Systems Corp ?

7 A. Yes.

8 Q. Do you remember Entertainment Systems
 9 Corp ?

10 A. Yes

11 Q. Is that company still in existence?

12 A. No

13 Q. When was that company formed?

14 A. Don't remember.

15 Q. When did it go out of business. if it did
 16 go out of business?

17 A. I don't -- it's out of business

18 Q. What was the purpose of the company?

19 A. The company was developing software for
 20 interactive video games under a -- this is my
 21 life -- back. I don't know. late '80's. early '90's
 22 or something It was -- some people brought me a
 23 concept of working with BBN and Loral. advanced
 24 military contractors who were trying to solve the

1 A. Could have been I don't remember

2 Q. What time period did the Credit Store --

3 A. I don't know. I'm asking you.

4 Q. You don't remember as you sit here?

5 A. I have some memory that -- if that's the
 6 one. then we did some of that stuff in Braintree
 7 back in the early '90's --

8 Q. And --

9 A. -- that had to do with marketing I mean.
 10 I had been involved with a client that developed a
 11 direct marketing concept into the insurance
 12 industry We used to do affinity marketing to
 13 nurses in that industry group. tying the use of
 14 credit cards to insurance for single parents that
 15 had no credit. So I think there was something that
 16 we did. but I don't remember right now

17 Q. So that's what you think the Credit Store.
 18 Inc. did?

19 A. If that was that I don't remember right
 20 now

21 Q. Who was the accountant for the Credit
 22 Store Inc.?

23 A. I have no idea

24 Q. Did the Credit Store. Inc. make any money?

1 issue of war games for the government under the --
 2 so the people who invented the Internet and the
 3 original ARPANET over in Cambridge had developed a
 4 system where you could get into a simulated Bradley
 5 tank whether you were in Cambridge. Massachusetts.
 6 or Fort Knox or Stuttgart. and they could do these
 7 video things like you're all on the same battle
 8 field in Boston. Massachusetts So some people in
 9 the gaming business came to me and they formed that
 10 company. Entertainment Systems Corp. and tried to
 11 get those engineers to build a game utilizing the
 12 high speed graphics and technology that the
 13 military was doing. so where the Segas and
 14 Nintendos were down here in low technology. these
 15 guys were using very high speed graphic engineering
 16 for silicon graphics. and those guys would just at
 17 night try to develop games. so we entered into a
 18 formal contract with Advanced Distributed
 19 Simulations. which was a division of BBN

20 Q. Bolt. Beranek and Newman?

21 A. Yeah. and then they got bought out by
 22 Schwartz the guy who owned Loral. which is one of
 23 the big military contractors. and after that
 24 acquisition it was difficult to get them to focus

1 They never finished the game It was a monster
 2 truck game. It's coming back to me now
 3
 4 Q Did you spend a considerable amount of time
 trying to make that project work?

5 MR. PETERS: Objection

6 A I spent time.

7 Q (BY MR. KATZ) In your own mind a
 8 considerable amount of time?

9 A Yeah. I spent some time on that

10 Q And is it a fair statement that you never
 11 made any money on that project?

12 A Yes

13 Q You never brought that product to market?

14 MR. PETERS: Asked and answered.

15 Q (BY MR. KATZ) Is that right?

16 MR. PETERS: Objection Answer it
 17 A Well, right The answer is the product
 18 never got finished, not because of what we were
 19 doing

20 Q (BY MR. KATZ) Okay

21 A Because of Ioral

22 Q Somebody else's fault?

23 A That's a generalization

24 Q But not your fault?

1 Q The Secretary of State's office lists you
 2 or has listed you as the president of an entity
 3 called Pixel Systems, Inc. Do you have any
 4 recollection of Pixel Systems, Inc.?

5 A The name means something, and it may be
 6 around the same time we were in the game -- the
 7 Entertainment Systems, Pixel Systems. Don't
 8 remember what it was, though

9 Q Okay. The Secretary of State's office also
 10 lists you as the secretary, or as having been the
 11 secretary of an entity called PTI Insurance Agency
 12 Inc. Do you have any recollection of PTI Insurance
 13 Agency, Inc.? You have to articulate your answer

14 A No, I don't.

15 Q The Secretary of State's office lists you
 16 as the secretary, or as having been the secretary
 17 of an entity called U.S.A. Realty Corporation. Do
 18 you have any recollection of U.S.A. Realty
 19 Corporation?

20 A No

21 Q The Secretary of State's office lists you
 22 as the president of SmartSource Direct, Inc. Have
 23 you ever been the president of SmartSource Direct,
 24 Inc.?

1 A The game didn't get finished into a
 2 commercial viable form. We actually had gone out
 3 and created the interest and had the buyers ready
 4 to go

5 Q Let me turn to another entity for which you
 6 were listed as the secretary, or had been listed as
 7 the secretary at the Massachusetts Secretary of
 8 State's office. That entity's name is Kedron
 9 Company, Inc., K-E-D-R-O-N Company, Inc. What's
 10 your recollection of Kedron Company, Inc.?

11 A I don't have any.

12 Q You don't remember Kedron Company at all?

13 A K-E --

14 Q K-E-D-R-O-N?

15 A No

16 Q You don't remember any involvement on your
 17 part with Kedron Company?

18 A Not today. Do you have something to
 19 refresh my recollection?

20 Q The Secretary of State's office also lists
 21 you as the secretary, or as having been the
 22 secretary of a company called Novations, Inc. Do
 23 you have any recollection of Novations, Inc.?

24 A No

1 A No

2 Q Do you have any idea as --

3 A Oh, I know. Well --

4 -- as to why the Secretary of State's
 5 office would have listed you as the president of
 6 SmartSource Direct, Inc.?

7 A Well, I was the president of CCMI, whose
 8 name was changed to SmartSource Direct, but I
 9 didn't handle that, so I assume -- I can only
 10 surmise that when they changed it to SmartSource,
 11 no one put in a new president, but it was a
 12 Delaware -- I thought it was a Delaware
 13 corporation, so I don't understand it.

14 Q Okay. Mr. Fireman, you've been involved as
 15 a party in over ten lawsuits or other legal
 16 proceedings since 1980; isn't that correct?

17 A I don't recall

18 Q Okay. Let me show you a document we've
 19 marked as Exhibit 62 --

20 (Exhibit 62 marked for identification)

21 Q And let me ask you if it's correct that in
 22 1982, you sued Michael Gross and others for legal
 23 fees. Isn't that correct?

24 A It purports -- yes. I don't have any

1 recollection. but it looks to me like we sued them
 2 Q Do you remember that one or more of the
 3 defendants counterclaimed contending that you had
 4 committed malpractice? And I call your attention
 5 to the document that we've marked as Exhibit 63
 6 (Exhibit 63 marked for identification)

7 MR PETERS: Objection.

8 Q (BY MR KATZ) Do you remember the
 9 counterclaim against you for malpractice?

10 A No, I do not

11 Q Okay In 1984. Mr. Fireman you sued --

12 A But it doesn't say malpractice You're
 13 categorizing Fail to incorporate or inform. Fail
 14 to incorporate counterclaim. It does not talk
 15 about malpractice You're categorizing it.

16 MR PETERS: Bob. that was the nature
 17 of my objection. The document speaks for itself.
 18 so I covered that with the objection

19 A Okay. I'm sorry

20 MR. PETERS: Any categorization or
 21 classification that Mr. Katz makes of a document.
 22 you'll hear me say objection I'm not sure where
 23 we'll go with this question at the time of trial.
 24 but I've got that covered

1 A If I read it. I may I don't. as you ask
 2 the question. but I'm going to read through and --
 3 Q You don't have to spend any more time on
 4 it Let me bring to your attention our next
 5 exhibit. which is Exhibit 66. and ask you is it not
 6 true Mr. Fireman. that judgement entered against
 7 you in the amount of approximately \$30.000 in the
 8 Presidential Financial Corporation case?

9 (Exhibit 66 marked for identification)

10 Q And here's Exhibit 66

11 A Are you testifying or are you asking me if
 12 I remember?

13 Q I'm asking if you remember

14 A I do remember what this is about now.

15 Q Tell us. please

16 A That's a long time ago. My family had been
 17 involved in the development of technology that
 18 would purify and destroy PCB's and dioxins in the
 19 environment A company here in Whitman.
 20 Massachusetts had developed something. and there
 21 was a technology that was developed at the
 22 University of Tennessee Space Institute in
 23 Tullahoma. Tennessee. and we raised some money and
 24 we put together a venture that would take these --

1 Q (BY MR KATZ) In 1984. Mr. Fireman. you
 2 sued an entity called Duke C. Limited And let me
 3 call your attention to a document we've marked as
 4 Exhibit 64

5 (Exhibit 64 marked for identification)

6 Q Do you remember your suit of Duke C
 7 Limited?

8 A No.

9 Q So you don't remember what that lawsuit was
 10 about?

11 A No, I have no memory

12 Q Okay

13 A But I'll read it.

14 Q No let's turn to the next lawsuit. In
 15 1985. you were sued by a company called
 16 Presidential Financial Corporation. which sued you
 17 for failure to pay a debt. correct?

18 A I don't remember

19 Q Let me show you a document we've marked as
 20 Exhibit 65 and let me ask you if that refreshes
 21 your recollection

22 (Exhibit 65 marked for identification)

23 Q Do you remember the Presidential Financial
 24 Corporation suit against you?

1 they were working there under Regan. had developed
 2 these antiballistic -- the Star Wars. and in these
 3 cylinders. they could get the temperature up to
 4 5.000 degrees Fahrenheit We did a deal with them
 5 and developed a product where these controlled
 6 rockets could go on to flat beds and go to where
 7 the poison was and destroy the waste that had just
 8 been the major factor of the Superfund So we took
 9 over a facility in Tennessee and in Georgia and we
 10 were utilizing this technology They had had some
 11 financing and we entered into a work-out. I
 12 believe. with these people We took over a
 13 facility that had some debt because they had a
 14 license to operate. and we had an incinerator that
 15 was licensed but no place to put it. So we did
 16 some work-outs and that's what this was all about

17 Q Okay

18 A We paid these people

19 Q In 1990. suit was brought against you by
 20 National Business Services -- Imaging Systems.
 21 Inc. and let me show you Exhibit 67 and just ask
 22 if you're the defendant in that lawsuit

23 (Exhibit 67 marked for identification)

24 Q It's just a yes or no question All I'm

1 asking is whether you're the defendant in -- in the
 2 suit brought by National Business Services Imaging
 3 Systems, Inc

4 MR. PETERS: I think the question is
 5 deceptively simple, but misleading. You know what
 6 this is about. Gordon Bob was to be a witness in
 7 another lawsuit. Objection

8 A And I was being sued to be a deponent

9 Q (BY MR. KATZ) Okay

10 A But not for the elements in it.

11 Q Let's turn to the next suit. In 1990.

12 BayBank -- excuse me; Middlesex sued you for
 13 failure to pay a debt. correct?

14 A Don't recall

15 Q Let me show you Exhibit 68

16 (Exhibit 68 marked for identification.)

17 A Yes I remember this now

18 Q And you owed the debt that

19 BayBank/Middlesex was seeking here. correct?

20 A No We had -- I guaranteed -- I guaranteed
 21 some notes for a client I think my father had
 22 too.

23 Q Indeed, your father did, right?

24 A Yeah

1 before the board on a petition for discipline and a
 2 stipulation of the parties was filed waiving
 3 hearing and requesting that the matter be resolved
 4 by the imposition of a public reprimand?

5 MR. PETERS: The question is did he
 6 read that correctly. You can answer that question.
 7 Bob.

8 A I'm reading this, if I could.

9 Q (BY MR. KATZ) The language I quoted is on
 10 page 99, and it comes right under the heading order
 11 of public reprimand. And to take your counsel's
 12 question. I read the language correctly, did I not?

13 A Well, which language?

14 Q The matter came before the board on a
 15 petition for discipline and a stipulation of the
 16 parties waiving hearing and requesting that the
 17 matter be resolved by the imposition of a public
 18 reprimand?

19 A Yes, we entered into a stipulation, but
 20 this matter had nothing to do with the BayBank
 21 matter.

22 Q Well, what did it have to do with?

23 A Something else. I don't really recall, but
 24 someone was trying to do something bad to my dad.

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1 Q And you forged your father's signature on
 2 certain documents in connection with the
 3 transaction with BayBank, did you not?

4 MR. PETERS: Objection

5 A No, that's not true.

6 Q (BY MR. KATZ) Let me show you
 7 Exhibit 69 --

8 (Exhibit 69 marked for identification.)

9 Q -- which is a report on Robert N. Fireman
 10 contained at 10 Mass. Attorney Discipline Reports
 11 97, 1994. And you're very familiar with this
 12 exhibit, are you not, Mr. Fireman?

13 A No

14 Q You don't remember this attorney discipline
 15 matter against you from 1994?

16 A I remember it, but you're asking me if I'm
 17 familiar with this document. The answer is no.

18 Q Now the matter that involves you came
 19 before the board on a petition for discipline, and
 20 a stipulation of the parties was filed waiving
 21 hearing and requesting that the matter be resolved
 22 by the imposition of a public reprimand, correct?

23 A The document speaks for itself

24 Q It says, does it not, that the matter came

1 and I stood up for him and that's all, but it had
 2 nothing to do with the bank

3 Q Didn't have anything to do with the
 4 BayBank/Middlesex lawsuit?

5 A No, nothing.

6 Q The board found that your conduct in
 7 signing your father's name to certain loan
 8 guarantees and in adopting a refinancing commitment
 9 without specific authority from your father and
 10 without any disclosure to the lender violated Canon
 11 1 and DR 1 hyphen 102A4 and A6, did it not?

12 MR. PETERS: Objection.

13 Q (BY MR. KATZ) If you have any doubt about
 14 that, take a look at the next to last paragraph on
 15 page 98 of Exhibit 69

16 A We entered into a stipulation to get this
 17 gone. I -- I did some things to protect my dad
 18 that made me sign the stipulation

19 Q What things?

20 A I don't remember, but some -- these guys
 21 were trying to do something bad to my father and I
 22 stood up, so I mean --

23 Q Signing your father's --

24 A But because I was an attorney, I had to

1 agree to the stipulation

2 Q So is it your testimony that signing your
3 father's name as a guarantor to loan documents was
4 standing up to help your father?

5 A No. that's not --

6 MR. PETERS: Objection

7 A I don't remember what happened. but that's
8 not what happened.

9 Q (BY MR. KATZ) But you'll agree with me
10 that you agreed to the board's finding that your
11 conduct in signing your father's name to loan
12 guarantees and adopting a refinancing commitment
13 without specific authority from your father and
14 without any disclosure to the lender violated Canon
15 1 DR 1 hyphen 102A4 and A6. right?

16 A No.

17 Q Isn't that what you agreed to when you
18 filed the stipulation --

19 A I agreed to sign the stipulation. but
20 that's not what happened

21 Q -- that's embraced in Exhibit 69?

22 A That's what it looks like. but that's not
23 what happened

24 Q Wouldn't you agree that the conduct that's

1 Q (BY MR. KATZ) You exposed the lender to
2 significant risk and could have caused substantial
3 harm absent your father's subsequent ratification.
4 right?

5 A No. not true. And I paid the lender.

6 MR. PETERS: Do we have another
7 question on 69?

8 MR. KATZ: No. we're done with that

9 MR. PETERS: Okay. You have seven
10 hours. which I'm going to keep you to to the
11 minute

12 MR. KATZ: Well. you can take your
13 position and if we need to challenge it. we'll in
14 due course challenge it. And we're going to move
15 as quickly as we possibly can. That's why I'm
16 asking the witness to answer questions with a yes
17 or no or an I don't know if --

18 A No. please. You said did I forge
19 documents. Counsel. you said did you forge
20 documents on this signature. and the answer is no.
21 That's a categorization and it's offensive. and
22 really. I'm surprised at you. Gordon. I am
23 surprised at you.

24 Q (BY MR. KATZ) We don't need to get into a

1 described in Exhibit 69 and attributed to you was
2 dishonest?

3 MR. PETERS: You know what? You're
4 going to have to start telling me how this is
5 germane. because I've noted my objections as to
6 relevance. but I'm pretty close to suspending the
7 deposition and getting a protective order. and
8 Gordon. I'm dead serious. Tell me why you think
9 this is admissible in federal court

10 MR. KATZ: I'm not going to answer the
11 question. but --

12 MR. PETERS: Well. I'm going to let him
13 answer this last question. If we don't move on.
14 we'll suspend and we'll see Judge Wolfe

15 MR. KATZ: Okay

16 Q (BY MR. KATZ) Do you need to hear the
17 question read back?

18 A I've answered this. Gordon. I was part of
19 the stipulation. It involved my father. The facts
20 in it are probably not accurate. but I did it

21 Q You didn't appeal the decision that's
22 embraced in Exhibit 69. did you?

23 MR. PETERS: Yes or no

24 A No

1 debate. but I asked you at the beginning of the
2 deposition to answer questions with a yes or no or
3 an I don't know in that fashion. and I'm not -- for
4 all of our benefit. I think we'll all get out of
5 here sooner if that's the case. But let's turn to
6 another lawsuit. In 1995. you were sued by
7 American Investment Fund; isn't that right?

8 A Don't remember

9 Q And you just need to answer the question
10 yes or no. Let me show you Exhibit 70
(Exhibit 70 marked for identification.)

11 MR. PETERS: Do you have a copy of
12 that, Gordon?

13 MR. KATZ: Oh. I'm sorry

14 Q (BY MR. KATZ) You can admit you were a
15 defendant in the suit --

16 A That's correct

17 Q -- by American Investment Fund?

18 A I was a defendant in the suit

19 Q And you entered into an agreement for
20 judgement with American Investment Fund; isn't that
21 correct?

22 A I guaranteed a note for a client and I
23 ended up paying for it. because I guaranteed it.

1 and I paid it all in full
 2 (Exhibit 71 marked for identification)
 3 Q. And Exhibit 71 is a copy of the agreement
 4 for judgement. is it not?
 5 A. Yes
 6 Q. And the agreement for judgement is in the
 7 amount of \$162.661; isn't that right?
 8 A. The document speaks for itself.
 9 Q. And I quoted it correctly. did I not?
 10 A. I didn't -- I don't know.
 11 Q. Just take a look Do you see the number
 12 \$162.661 \$1?
 13 A. Against me and Entertainment Systems Corp.
 14 yes.
 15 Q. Okay Thank you. Now, in 1999, a company
 16 called Interpros Consulting brought suit against
 17 CCMI for its failure to pay recruiting fees. right?
 18 A. Do not recall.
 19 Q. Let me show you Exhibit 72 and ask you if
 20 that refreshes your recollection
 21 (Exhibit 72 marked for identification)
 22 Q. Is your memory refreshed?
 23 A. Vaguely
 24 Q. Okay. You made the decision not to pay

1 A. I don't know how it got settled. but it
 2 did
 3 Q. And ultimately. Interpros was paid.
 4 correct?
 5 A. Don't know.
 6 (Exhibit 74 marked for identification)
 7 Q. In 2004, you brought an NASD arbitration
 8 against Morgan Stanley Dean Witter. correct?
 9 A. Correct
 10 Q. And the joint petition and motion to
 11 confirm Arbitrator's award which includes a copy of
 12 the Arbitrator's award is contained in Exhibit 74.
 13 is it not? let me call your attention -- well,
 14 strike that question for the moment, but can you
 15 answer my question: that the joint petition and
 16 motion to confirm the Arbitrator's award includes a
 17 copy of the Arbitrator's award?
 18 MR. PETERS: Objection
 19 A. Are you asking me if the document that says
 20 --
 21 Q. (BY MR. KATZ) Yeah, go to page nine.
 22 please
 23 A. They're not numbered
 24 Q. I know they're not numbered, but the ninth

1 Interpros. correct?
 2 A. Don't remember
 3 Q. Do you remember that Interpros obtained a
 4 trustee process attachment for the amount sought?
 5 A. Do not remember
 6 Q. Let me show you Exhibit 73 and ask you if
 7 that refreshes your recollection
 8 (Exhibit 73 marked for identification)
 9 A. It appears here
 10 Q. So that's a yes?
 11 A. I was trying to remember the substance of
 12 this. Gordon. It was someone that didn't work out
 13 for the company and we were disputing a head hunter
 14 fee
 15 Q. And Interpros brought suit and they got a
 16 trustee process attachment for the amount sought.
 17 correct?
 18 A. They got an ex parte trustee. I assume.
 19 Q. And to the best of your knowledge, that
 20 trustee process attachment was never dissolved
 21 correct, prior to the resolution of the case?
 22 A. Well, then it was resolved
 23 Q. But prior to the resolution of the case,
 24 the trustee process attachment was not resolved?

1 page of -- of the exhibit is a document titled
 2 stipulated award. correct?
 3 A. Yes, it is
 4 Q. And you signed the stipulated award on June
 5 14th, 2004. correct?
 6 A. Yes.
 7 Q. And in the stipulated award it says that
 8 you requested compensatory damages in the amount of
 9 \$1 million, treble damages in the amount of
 10 \$2 million, interest, cost and fees, attorney fees,
 11 and such further equitable and/or other relief as
 12 the NASD deems just and proper, right?
 13 A. That's what it says
 14 Q. And you asserted causes of action for
 15 churning, violation of federal and state securities
 16 laws, breach of fiduciary duty, negligence, NASD
 17 rule violations and failure to supervise, right?
 18 A. That's what it says
 19 Q. And the award indicates that you received
 20 no monetary amount on any of your claims; isn't
 21 that correct?
 22 MR. PETERS: Objection
 23 A. No. I believe we got some money
 24 Q. (BY MR. KATZ) Okay. How much money did

1 you receive?

2 A. A nominal amount, but it was, I don't know.

3 20. \$30,000. We didn't get the --

4 Q. You're sure about that?

5 A. That's my memory.

6 Q. Okay. In the arbitration, you asserted a
7 claim for breach of fiduciary duty; do you remember
8 that?

9 A. Yes.

10 Q. What does the term fiduciary duty mean?

11 A. According to Black's Law Dictionary?

12 Fiduciary duty is the duty of trust.

13 Q. When you were working at CCMi after it was
14 acquired by News America Marketing, did you have a
15 fiduciary duty --

16 MR. PETERS: Objection.

17 Q. (BY MR. KATZ) -- according to your own
18 understanding?

19 MR. PETERS: Objection. We will
20 stipulate to a fiduciary duty if you will stipulate
21 that the duty runs in both directions as fiduciary
22 duties do. Will you stipulate to that?

23 MR. KATZ: We're not doing any
24 stipulations of a legal nature during the course of

1 Q. (BY MR. KATZ) Okay. Again, I'm not asking

2 --

3 A. So if you want me to define fiduciary duty,
4 give me a dictionary and I'll read it into the
5 record.

6 Q. I'm only asking for your understanding, and
7 again, my question is only a yes or no question.
8 Did you believe that you had a fiduciary duty to
9 News America Marketing while you were working for
10 News America Marketing?

11 MR. PETERS: Objection.

12 A. I don't know.

13 Q. (BY MR. KATZ) Okay. Let's turn to
14 September 16th, 2004. Were you still employed by
15 News America Marketing on that date?

16 A. Don't know.

17 Q. Okay. Wasn't it just about towards the end
18 of your employment with News America Marketing?

19 A. Don't know.

20 Q. Now, on that date, you signed under oath a
21 verified complaint which your counsel filed in
22 Suffolk Superior Court on the following day.

23 September 17th, 2004. Isn't that correct?

24 A. Don't know.

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1 this deposition. I'm just asking for the witness'
2 understanding.

3 MR. PETERS: Well, the witness is a
4 lawyer but he's here as a lay person and he's not
5 going to answer legal questions for you.

6 MR. KATZ: Well, I'm only asking his
7 understanding. His understanding happens to be
8 informed by the fact that he's been practicing law
9 since 1974, but whatever his understanding is, it
10 is, and I'm just asking for what his understanding
11 is, so let me ask the question again.

12 Q. (BY MR. KATZ) When you were working for
13 News America Marketing after the acquisition of
14 CCMi, did you believe yourself to have any
15 fiduciary duties to News America Marketing?

16 MR. PETERS: Objection.

17 A. Fiduciary duties in a legal sense or in my
18 understanding? You're saying in my understanding
19 and you're asking a legal word, which is different
20 So I feel like you're trying to trick me into
21 saying something that's not true. I mean, are you
22 asking me -- I trust and deal in honesty and loyal
23 with the human race, including people I work for.
24 people I work with.

1 Q. Let me show you the document we've marked
2 as Exhibit 75.

3 (Exhibit 75 marked for identification.)

4 Q. You remember the case that you filed.
5 Mr. Fireman, against Blythe, Selby and Seltech,
6 Inc.?

7 A. Yes.

8 Q. In that complaint, you sought money from
9 Blythe, Selby and a company called Seltech, Inc.
10 correct?

11 A. Yes.

12 Q. And you claimed in paragraph seven of that
13 complaint that you loaned money to Mr. Selby and
14 Seltech for the purpose of Seltech's operating a
15 business that would sell gift and prepaid card
16 products to Wal-Mart and other retailers; isn't
17 that correct?

18 A. Yes.

19 Q. And you also claimed that -- in paragraph
20 ten that Mr. Selby on his behalf and on behalf of
21 Seltech agreed to repay you the principle together
22 with interest and a success fee related to
23 Seltech's business? Isn't that correct? Take a
24 look at paragraph ten.

1 A That's what it says

2 Q And if you take a look at paragraph 11 in
3 the verified complaint -- and by the way, you
4 signed this verified complaint, did you not? Take
5 a look at the last page

6 A That's my signature

7 Q And you signed it under the pains and
8 penalties of perjury, correct?

9 A Correct

10 Q And in the verified complaint, on paragraph
11 11, you claim that beginning in July 2001 and
12 ending in August 2003 you made 17 payments to
13 Seltech and Selby totaling \$193,461, correct?

14 A Yeah

15 Q Now, you were under contract to News
16 America Marketing between August 1999 and
17 August 2004; isn't that correct?

18 A Yes

19 Q Okay. And I'm going to show you Exhibit 76
20 and ask you if you could confirm for us that that's
21 a copy of your employment agreement with News
22 America Marketing.

(Exhibit 76 marked for identification)

24 A Yes

1 Do you remember Mr. Selby making that claim?

2 A I have general knowledge of all the claims
3 in there. They were not true, but go ahead

4 Q I'm going to show you Mr. Blythe Selby's
5 affidavit dated August ninth, 2004, which we've
6 marked as Exhibit 77

7 (Exhibit 77 marked for identification)

8 Q And at paragraph five of Exhibit 77,
9 Mr. Selby says that you, Mr. Fireman, in your role
10 as an attorney, you reviewed the proposed agreement
11 with Fiala, you annotated the agreement and you
12 recommended against his entering into the agreement
13 with Fiala. Isn't that what he says?

14 MR. PETERS: Objection

15 A The document speaks for itself

16 Q (BY MR. KATZ) Okay. Well, I read it
17 correctly, did I not?

18 A Which paragraph?

19 Q Paragraph five

20 A That's what it says.

21 Q Okay. And then, paragraph six says the
22 plaintiff, referring to you, Mr. Fireman, instead
23 suggested that I go into business with him and
24 indicated that he had sources of funding. He told

1 Q And you had a non-compete in your five-year
2 employment agreement with News America Marketing?

3 A The document speaks for itself

4 Q And you generally remember that there's a
5 non-compete provision in your employment agreement.
6 do you not? Take a look at paragraph six.
7 paragraph numbered six

8 A Okay

9 Q Do you agree with me there was a
10 non-compete in your employment agreement with News
11 America Marketing?

12 A Yes

13 Q Okay. And you also had a non-compete
14 provision in the Stock Purchase Agreement which you
15 entered into with News America Marketing on August
16 13th, 1999; isn't that correct?

17 A I don't know

18 Q You don't remember? Is that what you're
19 saying?

20 A Could have been

21 Q Okay. Now, do you remember that Mr. Selby
22 complained or rather claimed in an affidavit that
23 in early 2001 you dissuaded him from becoming an
24 independent contractor for a company called Fiala?

1 me that through his contacts he could raise in
2 excess of \$2 million. Isn't that what paragraph
3 six --

4 A That's correct

5 Q -- of Mr. Selby's affidavit says?

6 A Yeah.

7 Q Now, the Fiala business involved gift
8 cards, right?

9 A No

10 Q What did the Fiala business involve?

11 A Fiala was a manufacturer of paper products

12 Q And were the paper products used for gift
13 cards?

14 A They could be used for anything. They
15 manufactured corrugated boxes and they manufactured
16 gift -- they had a gift card application, yes. You
17 could put cards -- they had a patent to put cards
18 on a backer, and that's what they had.

19 Q And that's what Mr. Selby was interested
20 in, was he not?

21 A Mr. Selby? You'd have to ask him

22 Q Mr. Selby never told you that he was
23 interested in a gift card application?

24 A No. No. He didn't have to tell me. I had

1 been to Fiala's business I -- I've been to every
 2 manufacturer of -- card manufacturer in the United
 3 States looking for the best in value and process
 4 for our business

5 Q. But if we go back to paragraph five --

6 A. But I never advised Mr. Selby or
 7 represented him and he never did an agreement with
 8 Fiala. I mean, Mr. Selby is a very nefarious
 9 character who, you know, is presently in federal
 10 prison for not telling the truth to a lot of
 11 people I wasn't partners with him. None of what
 12 is in this affidavit is true. He made these wild
 13 accusations and then folded the case and settled
 14 the case, so if you're getting all excited about
 15 it. Gordon, there's no validity to anything that's
 16 in there and you're going -- we're getting far
 17 afield for why we're here. The bottom line is I
 18 didn't invest in Mr. Selby. I didn't represent
 19 him. There are certain vendors that I used that I
 20 befriended and he was a guy that I tried to help
 21 because he was having some problems and he was a
 22 strategic vendor for us if he could ever deliver on
 23 some of the things that we were working on

24 Q. Now, in Exhibit 75, you're seeking money

1 relationship with the people at Wal-Mart

2 Q. Did you discuss with anyone at News America
 3 Marketing the specific gift card business
 4 opportunity proposed by Mr. Selby and which is
 5 discussed in your verified complaint? That's a yes
 6 or no question.

7 A. Yes.

8 Q. Who did you discuss it with?

9 A. Everybody

10 Q. Who is everybody?

11 A. Everybody I introduced Blythe Selby to
 12 Q. So everybody you introduced Blythe Selby to
 13 you also said he has an idea to sell gift cards to
 14 Wal-Mart?

15 A. No, no, no. He had. He had the Wal-Mart
 16 agreement to sell plastic products. Not just gift
 17 cards. All cards. He had a relationship I met
 18 Blythe Selby through one of our manufacturers who
 19 said he has some ideas; maybe you can do some
 20 things together. So I mean, he had a contract with
 21 Wal-Mart that he would deliver to a factory and he
 22 was getting a fee. and he had that relationship
 23 with Arthur Blank, so he was -- if Blank sold cards
 24 to Wal-Mart, Selby was getting a fee. That had

1 against Mr. Fiala -- from Mr. Selby?

2 A. Yeah, I wanted money back. Yeah

3 Q. And you told us earlier that the company
 4 Seltech was in the gift card business, right?

5 A. I -- no. Seltech was Selby

6 Q. But I think you told us in my earlier
 7 questions that -- that you said in your verified
 8 complaint that Seltech was going to operate a
 9 business that would sell gift and prepaid card
 10 products to Wal-Mart and other retailers. Isn't
 11 that what's in Exhibit -- in paragraph seven of
 12 Exhibit 75?

13 A. Yes

14 Q. Okay. Now, let me ask you. Did you ever
 15 discuss the gift card business opportunity proposed
 16 by Mr. Selby with anyone at News America Marketing?

17 MR. PETERS: Objection to form of the
 18 question. Gift card business opportunity?

19 A. Let me just cut to the chase here

20 Q. (BY MR. KATZ) No, please just answer my
 21 question. It's a yes or no --

22 A. Oh, yes. I discussed Blythe Selby and
 23 introduced him to everybody in News Corp. and told
 24 him about -- he's from Arkansas -- and his

1 nothing to do with us. That was not an opportunity
 2 that we had participated in or had an opportunity
 3 to do. I mean, he was getting a milli something
 4 from the manufacturer as a rep. He was a rep of
 5 the manufacturer, not a competitor of ours. There
 6 was no concept of usurping a corporate opportunity.
 7 He was in trouble. He was bringing some good ideas
 8 of what we could grow at CCNI or SmartSource
 9 Direct. and I thought those ideas would pan into
 10 revenue for us.

11 The personal problems he had, he duped
 12 -- he said I need this to continue and I personally
 13 gave him some money and he was going to pay me out
 14 of his commissions and he didn't pay me, but it had
 15 nothing to do with us. I mean, he was sort of a
 16 resource for us that I kept alive, unfortunately.

17 Q. Did you ever receive permission from anyone
 18 at News America Marketing to be personally involved
 19 with Seltech in the manner you described in your
 20 verified complaint?

21 A. I wasn't personally involved with Seltech
 22 I had nothing to do with Seltech. I gave Blythe
 23 Selby money personally. I had my mother give him
 24 money. I wasn't investing in an opportunity. I

1 was helping this poor guy who told me that his son
 2 was in an accident and his father was dying.
 3 whatever. The answer is people aware of my
 4 relationship professional relationship with Selby
 5 or whatever company he was using. on a personal
 6 level. I helped him which had nothing to do with
 7 the company

8 Q. Who did you introduce Mr. Selby to at News
 9 America Marketing?

10 A. He would come -- Mr. Lellocouche. everybody
 11 Mr. Selby would come to Boston and spend time in
 12 the Boston office. He would meet me in the News
 13 America Marketing office at 1211 Avenue of the
 14 Americas. He probably met me in the Wilton office
 15 of NAM.

16 Q. But who besides Mr. Lellocouche did you
 17 introduce Mr. Selby to?

18 A. Ms. Raider knew him. Coughlin. whoever was
 19 working in the company.

20 Q. So you can't think of anybody?

21 A. Michael Cleary. Mr. Selby visited us at --
 22 all the secretaries. all the people in the office.
 23 all the salespeople. everybody knew Blythe Selby

24 Q. Okay. Are you familiar with something

1 A. De minimus, as far as I know. As far as I
 2 remember. we bought some computers from some
 3 private vendors that said it was licensed. and some
 4 of these issues came up because the computer comes
 5 with a set of Office. I don't remember. but if it
 6 was more than three or four or 5,000. I'd be
 7 surprised.

8 Q. I'm going to hand you what's already been
 9 marked as Exhibit 38. It is the Stock Purchase
 10 Agreement between Robert Fireman, Ann Raider,
 11 Curtis Smith, John H. Boyles and News America
 12 Marketing In-Store, Inc. dated August 13th, 1999.
 13 This agreement was entered into almost eight years
 14 ago. correct?

15 A. August 13th, 1999.

16 Q. And on page 52, you signed it? And there
 17 is a counterpart page 52. so don't be confused.

18 A. Yes.

19 Q. Both Ms. Raider and you were advised by
 20 counsel at Goodwin, Procter & Hoar throughout the
 21 preparation of the document?

22 A. Yes.

23 Q. Goodwin Procter reviewed drafts of the
 24 agreement, made comments and gave you advice.

1 called the Business Software Alliance?

2 A. Is that the Microsoft thing?

3 Q. Yeah. it's -- Microsoft is part of the BSA.

4 A. Yeah.

5 Q. Now, prior to its acquisition by NAM, CCMI
 6 had been contacted by the BSA because it had
 7 pirated the Office software; is that not correct?

8 MR. PETERS: Objection.

9 A. That's not correct. Gordon, you know --
 10 why do you have to characterize it as pirating?

11 MR. PETERS: Let's get through this.

12 Bob

13 Q. (BY MR. KATZ) You had told others in your
 14 office, did you not, to copy existing copies of
 15 Microsoft Office because it was cheaper to do that
 16 than to go out and obtain additional licenses;
 17 isn't that true?

18 A. Untrue. Absolutely totally untrue.

19 Q. Do you know who the employee was who
 20 informed the BSA of CCMI?

21 A. No idea.

22 Q. And how much did CCMI have to pay to BSI --
 23 how much did CCMI have to pay the BSA in order to
 24 resolve the issues that had been raised?

1 right?

2 A. Correct.

3 Q. And you believe you received very good
 4 advice from Goodwin Procter in connection with the
 5 agreement, right?

6 A. I don't know.

7 Q. You have some questions as to whether the
 8 advice you received from Goodwin Procter was good?

9 A. Yes.

10 Q. What are the issues that concerned you with
 11 respect to the advice that you got from Goodwin
 12 Procter?

13 A. Oh, I don't know. I think it should have
 14 been written stronger in our favor, but whatever.

15 Q. Okay. You also received advice regarding
 16 the agreement from Les Charm, one of your
 17 directors, right?

18 A. Correct.

19 Q. And Mr. Charm negotiated on your behalf
 20 with Mr. DeVoe from News America Marketing, right?

21 A. Yes.

22 Q. And Mr. Coughlin also had discussions with
 23 representatives of NAM prior to the agreement being
 24 signed, right?

1 A. Yes.
 2 Q. Okay. Do you know whether the other two
 3 shareholders of CCMi, Curtis Smith and John Boyles,
 4 had any discussions with representatives of NAM
 5 prior to the agreement being signed?

6 A. I don't recall.

7 Q. And the purpose of the agreement was to
 8 document the terms of the sale of your stock in
 9 CCMi to NAM, right?

10 A. I would say so.

11 Q. Okay. The Stock Purchase Agreement of
 12 August 13th, 1999 was a very important agreement
 13 for you, correct?

14 A. It was an agreement.

15 Q. Okay. Had you ever been a party to an
 16 agreement that was as important to you as this one?

17 A. Many, yes.

18 Q. Okay. At what time?

19 A. Over the course of time.

20 Q. Have you been a party to any agreement
 21 other than this that enabled you to receive over a
 22 million dollars?

23 A. Yes.

24 Q. Identify them, please.

1 A. Yes. I read --
 2 Q. And by that, I mean Exhibit 38.
 3 A. Yes.
 4 Q. And as a lawyer, you had seen formal
 5 agreements like this many, many times before,
 6 correct?

7 A. Yes.
 8 Q. Okay. And you've already told us that you
 9 represented sellers of business -- businesses
 10 before, right?

11 A. Yes.
 12 Q. And you've represented sellers of
 13 businesses before where they were transferring
 14 their stock in the business, right?

15 A. Yes.
 16 Q. And you've also represented sellers of
 17 business where they're transferring assets of the
 18 business, right?

19 A. Yes.

20 Q. Now, let's turn to page 41 of Exhibit 38.
 21 and let me call your attention to paragraph 8.1.
 22 You fully understood the meaning of paragraph 8.1,
 23 did you not?

24 MR. PETERS: Objection. You can answer.

1 A. I'm going to -- I was -- I mean, there
 2 would be -- I can't answer on attorney/client
 3 privilege.

4 Q. No, I'm asking about agreements where you
 5 were a party, not agreements where you were the
 6 attorney for the party, but --

7 A. Well, agreements where I was to get fees of
 8 more than a million dollars, yes.

9 Q. So --

10 A. But I was acting as an attorney in those
 11 transactions.

12 Q. But you've had such agreements --

13 A. Yes.

14 Q. -- where you received fees of over a
 15 million dollars?

16 A. Yes.

17 Q. And how many such agreements have you had?

18 A. I don't recall.

19 Q. More than five?

20 A. I don't recall.

21 Q. More than ten?

22 A. I don't recall.

23 Q. Okay. In any event, you read the agreement
 24 very carefully, did you not?

1 as to your understanding. My objection is to the
 2 extent it calls for a legal conclusion.

3 MR. KATZ: I'm only asking for his
 4 understanding.

5 MR. PETERS: I just wanted that clear
 6 on the record. I understand your question that
 7 way, but when you see the transcript, it may not
 8 read that way, so that's the nature of my
 9 objection.

10 A. I mean, I know -- I know what the clause
 11 means.

12 Q. (BY MR. KATZ) Okay. You have seen clauses
 13 of this kind many, many times before --

14 A. Yes.

15 Q. -- in your over 30 years of practice of
 16 law, right?

17 A. Yes.

18 Q. And you're aware that this kind of clause
 19 is termed an integration clause, right?

20 A. No. I'm not familiar with integration
 21 clause.

22 Q. You've never heard the term integration
 23 clause --

24 A. Just in your last deposition.

1 Q -- in your more than 30 years of law
 2 practice?

3 A No.

4 Q Okay You'd agree with me, though, that
 5 provisions like paragraph 8 1 are commonplace in
 6 formal written contracts, are they not?

7 A Yes.

8 Q Okay. And when you were preparing
 9 agreements, you often put clauses of the nature of
 10 8 1 in the agreements that you wrote; is that not
 11 correct?

12 A Yes.

13 Q Okay. And could you tell us what the
 14 purpose of a clause like paragraph 8 1 is?

15 MR PETERS: Objection

16 A No

17 MR PETERS: He's not here to provide
 18 you legal opinions

19 MR. KATZ: Well, what's his
 20 understanding of --

21 A I don't know.

22 MR PETERS: Same objection.

23 Q (BY MR KATZ) Why do you think it was
 24 included in Exhibit 38?

1 A Which version is this?

2 Q And this is seventh edition. It's the
 3 latest edition that we have in our law library.
 4 And do you see on page 1452, which is the second
 5 page of Exhibit 78, the definition of supercede?

6 Do you see that?

7 A Yes.

8 Q And supercede says -- supercede is defined
 9 as to annul, make void or repeal by taking the
 10 place of. Do you see that?

11 A I see where you read

12 Q Okay, and you'd agree with that as a
 13 definition of supercede, would you not?

14 A It's not mine to agree or disagree with
 15 Mr. Black.

16 Q You would take Black as a sufficient
 17 authority for the definition of supercede, would
 18 you not?

19 A I haven't met Mr. Black

20 Q I just need a yes or no answer

21 A It depends

22 Q Do you have any reason to disagree with the
 23 Black's Law Dictionary of supercede?

24 A No. I'm not going to fight with Black's Law

1 A I don't know. It's boilerplate.

2 Q Okay. Now, the provision states that this
 3 agreement, together with the schedules hereto,
 4 contain and are intended as a complete statement of
 5 all the terms of the arrangements between the
 6 parties with respect to the matters provided for
 7 and supercedes any previous agreements and
 8 understandings between the parties with respect to
 9 those matters. Did I read that correctly?

10 A You read it correctly.

11 Q Did you understand what the word supercede
 12 meant when it was used in paragraph 8 1?

13 A I didn't -- I didn't focus on what it
 14 meant. It didn't matter.

15 Q But you do know what the word supercede
 16 means, correct?

17 A Yes.

18 Q What do you think supercede means?

19 A I'm not going to speculate. It means what
 20 it means.

21 Q Okay. Let me show you Exhibit 78.

(Exhibit 78 marked for identification.)

22 Q And 78 is an excerpt from Black's Law

23 Dictionary

1 Dictionary

2 Q Okay. So you would agree, would you not,
 3 that the Stock Purchase Agreement of August 13th,
 4 1999 annuls or makes void any previous agreements
 5 and understandings between the parties with respect
 6 to the matters treated in the agreement; isn't that
 7 right?

8 MR PETERS: Objection.

9 A I don't know if that's right.

10 Q (BY MR KATZ) Okay. Returning your
 11 attention to Section 8 1, you understood that the
 12 provision meant that the terms of the agreement
 13 superceded any oral promises that you or Ms. Raider
 14 might have made to Mr. DeVoe or anyone else at NAM
 15 about CCMI. You understood that, did you not?

16 A No. I didn't.

17 Q Okay. You understood that Section 8 1
 18 meant that the terms of the agreement superceded
 19 any oral promises that Mr. Charm might have made to
 20 Mr. DeVoe or anyone else at NAM about CCMI. Did you
 21 not?

22 A No.

23 Q You understood, did you not, that Section
 24 8 1 meant that the terms of the agreement

1 superceded any promises. any oral promises that
 2 Mr Coughlin might have made to Mr DeVoe or anyone
 3 else at NAM about CCMI. right?
 4 A No.

5 Q You understood that the provision in 8 1
 6 meant that the terms of the agreement superceded
 7 any oral promises that Curtis Smith or John Boyles
 8 the other two directors and stockholders of CCMI
 9 might have made to Mr. DeVoe or anyone else at NAM
 10 about CCMI. right?

11 A No

12 Q And you also understood that this
 13 provision Section 8 1. meant that the terms of the
 14 agreement superceded any oral promises that you
 15 thought Mr. DeVoe or anyone else from NAM might
 16 have made to you or Ms. Raider. did you not?

17 A No

18 Q You understood that the provision in 8 1
 19 meant that the terms of the agreement superceded
 20 any oral promises that you thought Mr. DeVoe or
 21 anyone else from NAM might have made to Mr. Charm
 22 when he was negotiating on your behalf. did you
 23 not?

24 A No

1 Q I'm just saying you don't have any doubt --
 2 A Are you asking me if they slipped it in?
 3 Q You're not contending that they slipped it
 4 in. are you?

5 A Well. now that you raised it. maybe I
 6 should look It's part of the document

7 Q And it was always part of the document?

8 A It appears to be part of the document

9 Q And it was part of the document in its
 10 initial forms back in June and July of 1999; isn't
 11 that right?

12 A You'd have to show me the documents in
 13 July

14 Q And as you said yourself. it was
 15 boilerplate?

16 A That's not the question you asked me. You
 17 asked me if it was in the prior documents. so show
 18 me those and I'll answer

19 Q Right. You said show me. and I said that
 20 part of the agreement. Section 8 1. was
 21 boilerplate. That was a term that you used?

22 A You just asked me if it was part of the
 23 earlier versions of those documents

24 Q Right

1 Q But there's no doubt that you read Section
 2 8 1 before you signed the agreement. isn't that a
 3 fact?

4 A No.

5 Q Well. I think you told us before. did you
 6 not. that you read the agreement?

7 A It's boilerplate. Gordon. I don't think I
 8 -- I might not have read that clause

9 Q But it was certainly there for you to read?

10 A You asked me if there was a doubt that I
 11 read it and I answered there could be.

12 Q So you may have overlooked reading it? Is
 13 that what you're saying?

14 A I may have.

15 Q But you don't have any doubt that it was
 16 included in the document itself before you were
 17 asked to sign it?

18 A No. It's right there on page 41

19 Q Okay. It wasn't slipped into the document
 20 after you signed it. right? You're not suggesting
 21 that?

22 A You are

23 Q No. I'm not

24 A Oh

1 A And I say if you show me those documents. I
 2 will try to locate it.

3 Q But I'm moving on to another question. and
 4 the other question is Section 8 1 was boilerplate.
 5 right?

6 A It is a boilerplate clause in lots of
 7 agreements. as you asked me before

8 Q Okay. We don't disagree

9 A Well. we do disagree. as I answered no to
 10 eight other questions

11 Q Now. you also knew that the agreement could
 12 not be amended except by an instrument in writing.
 13 right?

14 A Are you asking me what the document says --
 15 Q Yes.

16 A -- or what I think it meant?

17 Q Well. I'm asking you what you knew. first
 18 of all. You knew that this agreement could not be
 19 amended except by an instrument in writing; isn't
 20 that right?

21 MR. PETERS: Was that your
 22 understanding. I think is Mr. Katz's question. not
 23 what the law is which is not that

24 A I understood that. Yes

1 Q (BY MR KATZ) Okay That's at Section
 2 8 6. right?
 3 A I don't know Do you want me to go to 8.6?
 4 Q Please.
 5 A That's what it says
 6 Q Okay Now the four sellers of CCMi agreed
 7 to sell their stock for \$2.8 million in cash.
 8 right?
 9 A No.

10 Q Okay \$2.8 million in cash and the other
 11 provisions of the agreement; will you go along with
 12 that?

13 A Yes.

14 Q Okay And do you know how the \$2.8 million
 15 was arrived at?

16 A Our request -- we were looking for --

17 Q It's just a yes or no question.

18 A Yes

19 Q You do know how the \$2.8 million was
 20 arrived at?

21 A I believe so, yes

22 Q Okay The \$2.8 million was not a multiple
 23 of CCMi's earnings from some prior period. right?

24 A No

1 Q And this was the income statement that you
 2 represented as accurately reflecting the income for
 3 Consumer Card Marketing, Inc. for the period ended
 4 December 31, 1998?

5 A If it's here as an exhibit, that's what we
 6 represented
 7 Q Okay And if we go to the line which says
 8 net operating income, at the bottom of the page,
 9 you'll see that it shows a loss of \$268,143 for the
 10 year ending December 31, 1998; isn't that correct?

11 A Well, the loss is here at 169

12 Q Okay So the net operating loss was
 13 \$268,143. and the net loss, the loss before taxes,
 14 was \$169,000 -- \$169,066 correct?

15 A That's correct.

16 Q So there's no doubt that there was a loss
 17 on CCMi's part in 1998, right?

18 A Correct

19 Q Not a gain, right?

20 A From an accounting standpoint, you're just
 21 giving me numbers and the numbers show a loss. If
 22 you're asking me what the assets were worth, that's
 23 a different question

24 Q Now, do you have a copy of the document

1 Q The \$2.8 million had no relation whatsoever
 2 to CCMi's prior earnings, right?

3 A I don't know.

4 Q CCMi in fact had a loss in 1998, right?

5 A No I think we made money

6 Q Take a look at Schedule 4.6 of Exhibit 38.

7 A Of which? This one?

8 Q Of the Stock Purchase Agreement Take a
 9 look at Exhibit 4.6

10 A Schedule or --

11 Q It's a schedule, yes And I'm going to
 12 walk over because I don't have my schedules with
 13 me

14 A I don't see 4.6

15 Q Okay Maybe it's 4.16 No I was right
 16 the first time. It's Schedule 4.6, titled
 17 financial statements, and we're looking at the page
 18 that says Consumer Card Marketing, Inc. income
 19 statement for the year ended December 31, 1998 Do
 20 you see where I'm reading?

21 A Yes.

22 Q And so this was the income statement for
 23 the year ended December 31, 1998? That's a yes?

24 A I see it It's right here

1 that we marked as Exhibit 16?

2 A No.

3 Q Okay let me hand you a copy of the
 4 document we've marked as Exhibit 16

5 A I haven't marked anything

6 Q No, we've previously marked this at
 7 Mr Coughlin's deposition, and this is a memorandum
 8 to you from Mr. Coughlin dated July sixth, 1999
 9 You've previously seen this document before, have
 10 you not, Mr. Fireman? Right?

11 A I saw it at the last deposition for
 12 Ms. Raider, but I --

13 Q Okay And if I could call your attention
 14 to the numbers that are on Bates stamp page FR
 15 2677, would you take a look at that page? Do you
 16 see that page?

17 A Yes.

18 Q And do you see the column of actuals that
 19 are on the left side of the page?

20 A I see where it's titled actuals

21 Q And these are actuals with respect to
 22 revenue and expenses and gross profit for CCMi.
 23 right?

24 A I don't know

1 Q Isn't that what the document purports to
2 be?

3 MR PETERS: Objection to the form of
4 the question.

5 Q (BY MR. KATZ) Okay

6 A I don't -- I don't know what these
7 documents purport to be. and I don't know that they
8 were always together like you have them here I
9 mean. this seems to be a series of different
10 documents that someone has tied together

11 Q Right They were -- they were put together
12 as they were produced You'll see that the numbers
13 --

14 A It does not mean they were part of this
15 original memorandum

16 Q Do you have any doubt that FR 2677 was not
17 prepared by Mr Coughlin?

18 A Yes. I do have doubts

19 Q You think Mr Coughlin didn't prepare 2677?

20 A I don't think he did

21 Q Who do you think did?

22 A I think Julie Openshaw did. Mr Coughlin
23 was working with the person at News America to come
24 up with some numbers we could all live with While

1 Q Would you agree with me that CCMi's revenue
2 in 1997 was approximately \$7.9 million?

3 A \$8 million.

4 Q \$8 million?

5 A By these numbers. yes.

6 Q And you don't have any reason to dispute
7 that, right?

8 A No.

9 Q And do you believe that in 1997, CCMi had a
10 profit of approximately \$403,000?

11 A I don't know

12 Q Okay. In 1996, CCMi's gross revenue was
13 just barely over 2.5 million. right?

14 A By this document

15 Q Okay. Do you have any reason to doubt it?

16 A No

17 Q And according to this document, in 1996,
18 CCMi had a loss of \$72,000 Do you see that?

19 A Yes

20 Q Okay Do you have any reason to doubt that
21 CCMi had a loss of \$72,000 in 1996?

22 A Well. I don't -- I would ask you who wrote
23 those numbers and why are they here? They don't --

24 Q I'm just asking a yes or no question

1 -- she's talking I couldn't create Julie's
2 spreadsheet I mean. the memo talks like these are
3 her numbers and he was raising some issues within
4 it

5 Q Okay Well. irrespective of the answer to
6 that question. let me ask you a few other
7 questions

8 A And obviously the earn-out summaries that
9 are attached here from years later were not part of
10 the memo

11 Q No question We don't disagree

12 A So you've attached a lot of documents that
13 aren't germane to the memo

14 Q Well, let's go to my questions. because
15 they're less related to the memo than they are to
16 some facts In 1997, according to the documents
17 here, CCMi's earnings were just barely \$400,000 on
18 gross revenue of \$7.9 million Do you see where
19 that's reflected on FR 2677?

20 A I see the number 403K on the bottom if
21 that's what you're referring to

22 Q Okay And you see on the total revenue
23 line the number of 7,916,762? Do you see that?

24 A Yes

1 A Well. I don't know

2 Q Okay. How much cash did you receive from
3 the \$2.8 million?

4 A I don't remember

5 Q You received \$1.3 million; isn't that
6 right?

7 A Approximately

8 Q Okay And did you or Ms. Raider share any
9 of your up-front cash with Mr. Adam or Mr. Coughlin
10 or anyone else from CCMi?

11 A I don't remember

12 Q Okay Now, Mr. Adam expected that he was
13 going to receive something from the proceeds of the
14 sale of the company. did he not?

15 A You'd have to ask him.

16 Q Yeah. he discussed this with you. did he
17 not?

18 A I don't remember I know that he had some
19 options and there was some discussion. but I don't
20 really remember what happened

21 Q Did you ever write Mr. Coughlin or Mr. Adam
22 a check out of the approximately \$1.4 million you
23 received --

24 A I might have

1 Q -- in consideration of his options --
 2 A I might have
 3 Q -- or their options?
 4 A I might have.
 5 Q You don't remember as you sit here today?
 6 A No.
 7 Q Now, you had a five-year employment
 8 agreement with News America Marketing, right?
 9 A Correct
 10 Q And you began with a salary of \$163,000
 11 under your News America Marketing employment
 12 agreement, right?
 13 A If that's what it says, yes
 14 Q You don't have any reason to doubt that?
 15 A No
 16 Q And News America Marketing gave you a
 17 salary increase every year, right?
 18 A Don't remember
 19 Q And these increases were all discretionary?
 20 right?
 21 A I don't remember. I think we were supposed
 22 to get treated commensurate to how senior
 23 executives in the company were being treated
 24 Q And salary increases for senior executives

1 were receiving from CCMI. did you receive anything
 2 else from CCMI prior to the acquisition as
 3 compensation?
 4 A I don't remember
 5 Q Back to your employment agreement with News
 6 America Marketing, you received discretionary
 7 bonuses under your News America Marketing
 8 employment agreement under all but the last of the
 9 five years of your employment agreement, right?
 10 A I don't recall
 11 Q You don't recall NAM granting you as much
 12 as about \$30,000 as a discretionary bonus in one or
 13 more years under your employment agreement?
 14 A No
 15 Q News America Marketing was not obligated to
 16 grant you any discretionary bonuses under your
 17 employment agreement, was it?
 18 A I don't know.
 19 Q But you do remember getting bonuses under
 20 your employment agreement?
 21 A There was a personal bonus, there was a
 22 corporate bonus, there was an annual review, and I
 23 participated in it until the end, or until the last
 24 year. I think there was another year that I got a

1 were discretionary, right?
 2 A I assume, yes.
 3 Q Now in fact, your salary went up
 4 immediately upon News America Marketing's
 5 acquisition of CCMI, right?
 6 A Don't remember.
 7 Q You were only making \$153,000 at the time
 8 of the acquisition in 1999, right?
 9 A I don't remember. I mean, I was -- I put
 10 up lots of money invested into CCMI
 11 Q Take a look at Schedule 4.13 of Exhibit 38
 12 A If it says that was my salary, then that's
 13 probably true.
 14 Q Okay, so --
 15 A Whether --
 16 Q Take a look at it and just confirm for me
 17 that what you represented that you were making
 18 prior to the acquisition was \$153,000.
 19 A What number?
 20 Q Schedule 4.13
 21 A I can't find it.
 22 Q 4.13 of the Stock Purchase Agreement
 23 A I'm listed at 153,000, correct.
 24 Q Now, besides the \$153,000 salary which you

1 questionable mark or something
 2 Q Now, you received formal written
 3 evaluations by your superiors at News America
 4 Marketing during each of the years of your
 5 employment at News America Marketing, right?
 6 A Formal written what?
 7 Q Formal written evaluations.
 8 A There was an appraisal, self-appraisal
 9 process, yes.
 10 Q And you received evaluations from your
 11 superiors --
 12 A Yes.
 13 Q -- regarding your performance, right?
 14 A Yes, except the last year when I wasn't
 15 afforded the process.
 16 Q Okay. For the most part, the reviews News
 17 America Marketing gave you were very favorable.
 18 were they not?
 19 A Yes.
 20 Q And while you were employed at News America
 21 Marketing, you were a managerial employee part of
 22 the time, right?
 23 A I was supposed to be.
 24 Q And as a managerial employee, did you

1 believe that you had fiduciary duties to News
 2 America Marketing?

3 MR. PETERS: Objection

4 Q. (BY MR. KATZ) It's a yes or no

5 A. I don't know

6 Q. Were you bound by a code of ethics while
 7 you were at News America Marketing?

8 A. A code?

9 Q. Yes

10 A. A News America code?

11 Q. Yes.

12 A. That's -- if there was a code of ethics in
 13 an employee journal. I don't know I don't recall

14 Q. You don't remember reading a code of ethics
 15 provided by News America Marketing? Is that what
 16 you're saying?

17 A. I don't recall a specific code of ethics
 18 document right at this moment. no

19 Q. But you can't say one way or the other
 20 whether or not you actually read it? Is that what
 21 you're saying?

22 A. I can't recall actually reading a specific
 23 document

24 Q. Do you ever remember seeing a specific

1 1:02)

2 Q. (BY MR. KATZ) We're back on the record.
 3 Apart from the cash that you received as part of
 4 the sale of CCMI to News America Marketing. you
 5 also received the opportunity to receive earn-out
 6 payments as part of the 1999 Stock Purchase
 7 Agreement. correct?

8 A. Yes.

9 Q. And you also received the opportunity to
 10 receive a bonus on top of the earn-out if the gross
 11 margin exceeded certain benchmarks in years one and
 12 two after the acquisition. right?

13 A. Yes.

14 Q. What is the purpose of an earn-out from a
 15 buyer's prospective?

16 A. Well. the purpose was to --

17 Q. From the buyer's perspective.

18 A. -- make additional money for the sale of
 19 your business

20 Q. No. no. That's the seller's perspective
 21 From the buyer's perspective. what's the purpose of
 22 an earn-out?

23 A. Make additional money from the sale of your
 24 business. Two and two equals six. The purpose of

1 document relating to a code of ethics coming from
 2 News America Marketing?

3 A. Not today

4 Q. If you as an employee of News America
 5 Marketing saw someone in the company taking
 6 advantage of what could be a corporate opportunity.
 7 did you believe that you had a duty to report it to
 8 News America senior executives?

9 A. Yes

10 Q. Have you ever traded in stock or stock
 11 options of News Corp.?

12 A. No. only there was some warrants given some
 13 employees.

14 Q. Okay

15 A. Other than that. no

16 Q. And did you exercise your warrants?

17 A. I think at the end I did. yes. I had to or
 18 I'd lose them or something

19 Q. But apart from the exercise of your
 20 warrants you've done no other trading in News
 21 Corp. Stock or News Corp. options?

22 A. Not to my knowledge.

23 (Off the record)

24 (Lunch recess taken from 12:16 to

1 -- it's the buyer's perspective as well

2 Q. Okay

3 A. The -- the deal was structured -- I mean.
 4 we were looking for eight million in down payment.
 5 so if you -- it's the ability -- David DeVoe says I
 6 can only pay three in cash. That was his capital
 7 available. And he structured two two-and-a-half
 8 million dollar bonuses for year one and year two --
 9 that's the super bonus -- giving us the chance to
 10 get the \$8 million. The balance of the earn-out
 11 was a formula that he created for additional
 12 earn-outs. growing the plan. as you so know. to
 13 \$50 million in four or five years

14 Q. Okay. But there was no guarantee of any
 15 earn-out payment in the agreement. right?

16 A. No. there was no guarantee.

17 Q. And there was no guarantee of any bonus if
 18 the gross margin exceeded the stated benchmarks.

19 right?

20 A. Exceeded?

21 Q. There was no guarantee of a bonus regarding
 22 the super bonus that you just mentioned before; the
 23 super bonus wasn't guaranteed. right?

24 A. Well. the first number for the first year

1 was so easily attainable if the company just
 2 followed the plan that we laid out and that was
 3 agreed upon between News America and CCMi. We were
 4 just achieving a number that we had already
 5 obtained in an exploding emerging marketplace. I
 6 mean. I understand your questions. and you keep
 7 mentioning gross. whether we earned money or lost
 8 money. This acquisition wasn't based on the
 9 earnings or the revenue of CCMi. It was based upon
 10 the emerging marketplace in loyalty marketing that
 11 was about to explode. and every supermarket in the
 12 country and then every retailer in the country was
 13 about to either enter into or consider seriously a
 14 loyalty program. and CCMi was one of one or two
 15 companies in the country that had the expertise and
 16 the ability to execute those programs. So I mean.
 17 we were a development stage company and ready to
 18 explode. The achieving of the revenue was a given
 19 if we could just maintain a market share. If we
 20 could have the three things that we needed; the
 21 sales force. some funding to expand the software.
 22 and some capital.

23 Q Okay. The earn-out and the bonus were
 24 contingent on how well CCMi performed after the

1 MR PETERS: Okay
 2 A Well. I'll be here all day to do that
 3 Q (BY MR KATZ) And the reason for that is
 4 you could go through all of the many pages of the
 5 documents and you'll never find reference to any
 6 particular business plan. correct?

7 A But the numbers that are in the document as
 8 far as the earnings -- which section is it? Two?

9 Q 2.3?

10 A Yeah. These numbers are from the plan
 11 The plan is implicit in the numbers. When they say
 12 16.8 or 14.5, it's based on the plan. It might as
 13 well say 850 percent. so shall be increased by an
 14 amount equal to 16.8 --

15 Q Of what?

16 A Of the gross margin based on the plan. In
 17 the exhibit you showed me --

18 Q It doesn't say based on the plan, does it?

19 A Well, it's based on the earnings of the
 20 company, which is based on the plan. Fine.

21 Q But it never says anything about based on
 22 any plan. right?

23 A The word is not there. but it's so
 24 implicit. It's incorporated. It's what the deal

1 acquisition of your stock right? You'd agree with
 2 that?

3 A The earn-out was a factor of how well the
 4 two companies executed the plan --

5 Q Okay

6 A -- that was agreed upon. which was implicit
 7 in the agreement. I mean. you've got a clause
 8 there that says bonus. The reason for the bonus is
 9 the plan

10 Q And -- but the plan is nowhere mentioned in
 11 the Stock Purchase Agreement. is it?

12 A It's implicit in the stock agreement. It's
 13 all about the plan.

14 Q But the word plan is never mentioned in the
 15 Stock Purchase Agreement itself. right?

16 A Yes

17 Q Where?

18 A It refers to --

19 Q Let's get out Exhibit 38 and show me where
 20 the plan is mentioned

21 A The whole document is about the plan

22 MR PETERS: You're asking the witness
 23 to find the word plan?

24 MR KATZ: Yes

1 was. If you're saying that this agreement is not
 2 the agreement. I mean, these are just numbers
 3 They referred to a business deal, a basis of a
 4 bargain that was created between two companies. and
 5 these are just the numbers that reflected the
 6 numbers.

7 Q Let's go to paragraph 6.8 of Exhibit 38

8 A Sure.

9 Q You're familiar with paragraph 6.8 of
 10 Exhibit 38?

11 A Yes

12 Q You were not happy with the inclusion of
 13 this paragraph in the Stock Purchase Agreement.
 14 were you?

15 A I don't think I was happy or unhappy

16 Q Read it carefully

17 A I understand this

18 Q You've read paragraph 6.8?

19 A Yes

20 Q You objected to the inclusion of paragraph
 21 6.8 in the Stock Purchase Agreement. did you not?

22 A We negotiated the contract. I mean. Les
 23 Charm negotiated the contract

24 Q But when paragraph --

1 A 6 8 was discussed

2 Q And when it was first -- when paragraph 6 8
3 was first proposed. you or Mr. Charm on your behalf
4 objected to it. correct?

5 A Well. I don't think it was in this form
6 when it was first presented.

7 Q What form was it in?

8 A Let's just cut right to the chase. There
9 was -- this bit about sole and unfettered judgement
10 was the issue

11 Q And --

12 A And the issue was discussed and I think
13 this case was modified and there was discussion.
14 you know. and the discussion was that yes. we would
15 agree on a plan and we would discuss issues and
16 budgets and personnels and how to run the company.
17 and if there had to be a disagreement after
18 everything that was done. they get an extra vote
19 They had the judgement. It was their money. We
20 worried about the clause and they added -- I
21 believe they added this beginning saying that yeah.
22 there's a plan and the plan was it's the intention
23 of the current -- of the company to utilize the
24 buyer's sales force. assist the company in the

1 sentence which you just read. News America
2 Marketing did not guarantee that it would provide
3 any particular level of support to the CCMi
4 business. did it?

5 A Well. David DeVoe guaranteed that he was
6 honest. that he would execute the plan. and that he
7 would do what we agreed to do. but he told me. and
8 when Ann got back to him on this thing. he told her
9 that that was just a bunch of legalese and it meant
10 he could integrate the company somewhere else. And
11 I said to Ann. do you trust David DeVoe? And she
12 says I trust him. But you know. the words were
13 inserted here. and I don't remember the full level
14 of the negotiations. but to offset that final vote
15 sort of thing. NAM put in here that they -- we
16 could utilize their sales force. we could take
17 those 200 manufacturers representatives and empower
18 them with our products. that we could utilize the
19 -- their relationships and use the money in a way
20 that we agreed we needed to do. It was our plan
21 A million and a half dollars in capital was what I
22 was going to spend in our discretion as we saw fit
23 to build the business. The marketplace was just
24 changing. I mean, the -- EFT's supermarkets did

1 creation of the relationships. and invest in the
2 software. Those were the three keys of what we
3 needed

4 Q Okay

5 A And that was put in there to say yes. well.
6 we're not just saying we're not going to do
7 anything. I mean. it wasn't like in their sole and
8 unfettered judgement they could walk in the next
9 day and close the company. fire the people. shoot
10 everybody. I mean --

11 Q And of course they didn't do that. did
12 they?

13 A Well. they did some of it. They --

14 Q They didn't close the company. right?

15 A Well. they broke up the company. They
16 broke up the creative core of the company

17 Q In your opinion

18 A They fractionalized people's
19 responsibilities. including my own. and they took
20 apart something that was the most young and
21 exciting company in its field just at the time when
22 the critical nature of the expansion was there

23 Q Okay. Now in the first sentence of
24 paragraph 6 8. the paragraph which -- or the

1 not have terminals. To really -- the questions --
2 I mean. if I can explain --

3 Q Well. we'll get a chance to do that

4 A Okay

5 Q But I really just want you to answer my
6 questions yes or no or I don't know. and if my
7 questions are open-ended. you can expound. but
8 please keep to the questions -- please keep your
9 answers to the questions. because we don't have all
10 the time in the world. Do you understand?

11 A Yes.

12 Q And I'm going to ask you one more time
13 The first sentence of paragraph 6 8 does not
14 guarantee that NAM is going to provide any
15 particular level of support to the business of
16 CCMi. right?

17 A Wrong

18 Q Okay. This first sentence in paragraph 6 8
19 does not say that NAM must provide support for the
20 business of CCMi. right?

21 A Wrong

22 Q Okay. Now. you have heard. have you not.
23 that it's NAM's policy to add head count only after
24 the -- after the business materializes? You've

1 heard that before have you not?

2 A No

3 Q Have you ever heard the expression head
4 count follows business?

5 A Yes.

6 Q Used at NAM?

7 A No

8 Q You've never heard that expression used at
9 NAM?

10 A I have no recollection of that

11 Q Okay

12 A We weren't asking for head count. We were
13 asking for the existing head counts. The intent of
14 this thing was to utilize the existing head count.
15 What else did we need them for?

16 Q When I asked you a moment ago whether NAM
17 was guaranteeing a particular level of support to
18 the business of CCMI, you suggested the answer was
19 yes, correct?

20 A Yes. We had a deal.

21 Q Okay. Where in the language of the first
22 sentence of 6.8 do you infer that NAM was
23 guaranteeing some level of support -- some
24 particular level of support to the business of

1 A No.

2 Q Can you identify to me any doors of
3 customers which were opened for CCMI's products by
4 NAM's sales forces?

5 A When?

6 Q During the period of time you were at NAM?

7 A Over five years?

8 Q Yes. Mm-hmm

9 A What sales forces? I mean --

10 Q Well, the sales force that's referred to in
11 the first sentence of paragraph 6.8

12 A We never got them.

13 Q There was no one from the NAM sales force
14 that assisted the business of CCMI?

15 A When we made the deal, NAM had --

16 Q I'm not talking about the deal. I'm
17 talking about the five years in which the earn-out
18 applied.

19 A Sure. There was some people here or there.

20 Go ahead

21 Q So you agree that there were people in the
22 sales force at NAM who opened doors of customers
23 for CCMI products? Isn't that right?

24 A De minimus

1 CCMI?

2 A NAM added the language that was just the
3 basic of a lot of things they promised as the basis
4 of the bargain of the deal, that they were going to
5 do this in good faith and that we were going to
6 grow the business together, and it says right here,
7 utilize buyer's sales force in order to promote the
8 sale of the company's products, assist the company
9 in the creation of long-term relationships with
10 retailers, invest in the software and hardware as
11 needed to expand the company's business. Those
12 were the core. That was the core of the basis of
13 the bargain and there were other promises as part
14 of it. I mean, they were taking talents.

15 Q Let me come back. Again, Mr. Fireman, we
16 will do a lot better if you just answer my
17 questions yes or no when it calls for a yes or no
18 answer. This one, let me just rephrase the
19 question and see if you can answer it. Can you
20 show me the word guaranteed in the first sentence of
21 paragraph 6.8?

22 A No.

23 Q Can you show me the word required in the
24 first sentence of paragraph 6.8?

1 Q Okay. Did you have any customer meetings,
2 whether they led to a sale or not, which came about
3 because someone in the CCMI or the SSD division --
4 I'm sorry; someone other than those in the CCMI or
5 SSD division was able to open a door for you?

6 A Gordon, there were lots of things that
7 happened over five years. If you really want to
8 understand what 6.8 means --

9 MR. PETERS: He's asking you a
10 different question.

11 Q (BY MR. KATZ) I'm asking you a different
12 question right now.

13 A The answer is of course I would meet with
14 somebody from time to time.

15 Q Right. So the sales force at NAM was
16 successful in facilitating sales meetings which you
17 and other members of the CCMI or SSD division
18 participated in?

19 MR. PETERS: Objection.

20 A No.

21 Q (BY MR. KATZ) There weren't?

22 A Not this sales force, not those kinds of
23 meetings.

24 Q You're sure about that?

1 A. This clause meant to us that a 240-man
 2 existing firm's salespeople would be utilized to
 3 represent that to the packaged goods world and it
 4 was supposed to start immediately. They -- they
 5 fired half their people, merged the forces and
 6 never told us, and that happened prior to this
 7 closing and they didn't represent it. They
 8 fraudulently induced us into this agreement with no
 9 intent of good faith implementing it.

10 Q. But you had no claim for fraud in this
 11 case, correct?

12 A. Only because the statute of limitations
 13 ran or else this is the biggest fraud case that we
 14 could ever have.

15 Q. But the statute of limitations --

16 A. Within three months of this deal, they
 17 broke every promise they ever made

18 Q. And notwithstanding that, you never brought
 19 suit within the limitations period, right?

20 A. Not within the limitations for fraud, but
 21 we did bring suit. We brought suit earlier

22 Q. Prior to the 2005 suit?

23 A. We did file a suit back in --

24 Q. When did this occur? When was the first

1 Q. You were never sued by NAM in New York.
 2 right?

3 A. Our people were being threatened. Our
 4 people were being forced to leave. We had been
 5 reprimanded for protesting that they're not doing
 6 the bargain. We were called to the chairman of the
 7 board's office and he says behave or you're through
 8 here. And we felt like they were just -- they
 9 tried to take our technology and our know-how and
 10 throw us out the door. We engaged counsel, and
 11 part of that is privileged, but we did enter a
 12 lawsuit, and when we weren't sued by News, we tried
 13 to make the best and execute the plan and hope that
 14 they would change their mind.

15 Q. And you voluntarily withdrew your suit? Is
 16 that what happened?

17 A. Yes. I believe we left it or we -- I don't
 18 remember.

19 Q. Did you inform anyone at NAM that you had
 20 filed suit?

21 A. No, we did not. We didn't serve anybody
 22 and we wanted to make the deal work. I mean, Ann
 23 Raider -- Ann Raider was -- her father was ill, her
 24 son was ill. She had a kid in college.

1 suit?

2 A. After we were reprimanded and threatened by
 3 the chairman, after they were breaking up the
 4 company, after we sent letters of protest and we
 5 got nowhere, we believed that they were going to
 6 sue us and throw us out, and that they had so
 7 turned around this thing, that they had so little
 8 intent on building our plan, that their focus was
 9 on other businesses that we engaged counsel and we
 10 entered a complaint fearing that we were going to
 11 be sued in New York by News Corp., News America
 12 Marketing.

13 Q. And did you file that complaint?

14 A. Yes.

15 Q. Where?

16 A. Suffolk Superior Court.

17 Q. When did you file that report?

18 A. Sometime in 1999 or 2000, early 2000. I
 19 don't remember.

20 Q. Did you ever serve the complaint?

21 A. No. We had to bring suit in New York,
 22 which we couldn't afford to defend.

23 Q. So you weren't sued in New York?

24 A. No.

1 Q. What SmartSource Direct product was the CPG
 2 national sales force supposed to be selling?

3 A. All of it.

4 Q. Everything?

5 A. To ask the question means you don't really
 6 understand the business we were in. I mean, let me
 7 explain, okay? Supermarkets had just gotten credit
 8 card -- electronic funds transfer. The ability to
 9 take a check cashing card and put a mag stripe or a
 10 bar code and identify someone's customer base was
 11 about to emerge in 2,000 in 40,000 supermarkets.
 12 Coca-Cola had just done a study validating that
 13 every retailer should be going to one to one
 14 marketing and understanding its business. There
 15 was parity in the supermarkets. They had to retain
 16 their customers and they didn't know who they were.

17 For years, Ann and I had gone around
 18 and were singing the message and we had a
 19 relationship hopefully with every retailer in the
 20 country. They were about to make the decision, and
 21 for us to execute, we needed a sales force to go
 22 and tell the packaged goods people that we could
 23 deliver --

24 Q. I'm going to ask --

1 A I'm going to answer the question. You said
 2 not to interrupt you. You should not interrupt me
 3 Q Okay. Well, I don't think you're answering
 4 the question. Since we have limited time, we have
 5 limited time. I want to move and I want to again
 6 ask you to just answer the question. If you don't
 7 we're going to stay here as long as necessary
 8 because it's not our fault that it's taking longer
 9 for you to answer the question. Your speeches are
 10 on your time, not on our time.

11 A You asked me a question. I gave you my
 12 best answer.

13 Q Okay. Well, just listen to the question
 14 and answer the question. Don't give me speeches
 15 that are unrelated to the question I ask. Do you
 16 agree?

17 A Well, I don't agree that that's what I was
 18 doing a minute ago.

19 Q Okay. Now, you would agree, would you not,
 20 that News America Marketing made efforts to help
 21 News America Marketing -- or rather help CCMCI
 22 establish long-term relationships with retailers:
 23 isn't that right?

24 A No.

1 A No, no, no. There was a NAM office in
 2 K-Mart, and yes, through that person, I reached
 3 somebody.

4 Q Okay.

5 A One of the few.

6 Q Now, NAM assisted you in making a marketing
 7 alliance with Airtime Technologies, correct?

8 A No.

9 Q Okay. Let's mark as Exhibit 79 a press
 10 release from News America Marketing titled News
 11 America Marketing announces alliance with Airtime
 12 Technologies to distribute next generation in
 13 stored value and prepaid products.

14 (Exhibit 79 marked for identification.)

15 Q NAM publicized the making of the marketing
 16 alliance with Airtime Technologies, did it not?

17 A Yes.

18 Q And didn't the legal department of NAM
 19 assist CCMCI?

20 A No.

21 Q Never?

22 A The legal department?

23 Q Yes. Didn't Mr. Lippner assist even you on
 24 legal matters which came up during your employment.

1 Q Didn't NAM help CCMCI land Giant?

2 A No.

3 Q Didn't NAM help CCMCI land Kroger?

4 A You're asking a general question. We had
 5 relationships with Kroger and with Ahold prior to
 6 NAM.

7 Q But didn't NAM help to some degree?

8 A Sometimes it helped and sometimes it hurt.
 9 They didn't have the best reputation with the
 10 supermarkets.

11 Q Now you're making a speech. I asked for
 12 just a yes or no answer.

13 A I answered it.

14 Q Didn't NAM make efforts to assist you to
 15 land K-Mart as a client?

16 A I was working for NAM a hundred percent
 17 If I was going to K-Mart, I was going to K-Mart as
 18 NAM, so did NAM -- did my employer -- I don't
 19 understand the question.

20 Q Didn't others at NAM besides those in the
 21 SSD division assist you in reaching out to K-Mart?

22 A The K-Mart situation -- K-Mart was in
 23 bankruptcy.

24 Q I just want a yes or no.

1 with News America Marketing?

2 MR. PETERS: Which -- do we have
 3 another question now?

4 MR. KATZ: I think I just asked the
 5 question I said didn't Mr. Lippner --

6 MR. PETERS: I think you had a question
 7 pending when you asked another question, Gordon.
 8 That's the only reason I mention it.

9 Q (BY MR. KATZ) I asked didn't Mr. Lippner
 10 assist even you in legal matters which came up
 11 during your employment?

12 A Yes. I worked with Mr. Lippner and
 13 Ms. Constantine, but they didn't -- I mean --

14 Q And there's no doubt that News America
 15 Marketing invested in software and hardware for
 16 CCMCI, right?

17 A Yes, there's a doubt, and it has nothing to
 18 do with this here.

19 Q I didn't say it did. I'm asking you a
 20 different question.

21 A Do you want to know what happened with
 22 Airtime?

23 Q No. I'm asking a different question.
 24 There's no doubt that News America Marketing

1 invested in software and hardware for CCMi. right?

2 A The investment in software and hardware was
3 totally mismanaged, mishandled. The answer is I
4 don't believe they did. The answer is no.

5 Q They didn't invest? Is that your answer?

6 A No That's my answer.

7 Q So you're saying under oath that News
8 America Marketing never spent a dime for hardware
9 or software for CCMi?

10 A No. I'm not saying that.

11 Q Okay You remember the Epiphany software
12 system?

13 A Oh. I do very well.

14 Q Okay and you remember the hardware that
15 went with it. right?

16 A No. I had nothing to do with the hardware
17 that went with it

18 Q You just know about the software? Is that
19 what you're saying?

20 A I know what happened with the purchase of
21 Epiphany and the development of the Aspen system

22 Q Okay And the Epiphany software and the
23 related hardware were a \$2 million investment on
News America Marketing's part, right?

1 Q Okay Well. let's go back. You and Bill

2 Adam first discovered the Epiphany system. right?

3 A We were asked -- what do you mean
4 discovered?

5 Q Well. you brought it to News America
6 Marketing's attention. the Epiphany system. right?

7 A CCMi had developed millions of dollars of
8 marketing analysis system. We were either going to
9 expand it or we were going to look at building or
10 buying a system

11 Q I have to ask you to just answer my
12 question.

13 A Bill Adam and I went to look at different
14 softwares that were in the space for what they call
15 customer relationship marketing

16 Q And you found Epiphany?

17 A We benchmarked Epiphany

18 Q And you brought it to the attention of
19 others at News America Marketing. right?

20 A Yes

21 Q Okay And you proposed that your
22 supervisors at News America Marketing recommend
23 that it be purchased. right?

24 A No

1 A Don't know. I wasn't involved. I was
2 taken off of that assignment

3 Q Okay so you don't know that the investment
4 was in the neighborhood of \$2 million for the
5 Epiphany software and related hardware?

6 A I know it was totally unnecessary.

7 Q Again. you have to answer --

8 A I don't know. I have no personal knowledge
9 of what they spent other than what they showed me
10 in the earn-out.

11 Q Okay. and they showed you. did they not.
12 that the total amount that was spent for the
13 Epiphany software and hardware was approximately
14 \$2 million?

15 A No, they showed me that they applied 900 or
16 a million one of it to CCMi --

17 Q And that wasn't --

18 A -- because they bought unlimited seats for
19 other NAM purposes of the software.

20 Q But that wasn't the entire cost of the
21 Epiphany software and related hardware, was it?

22 A But it wasn't for SmartSource Direct. It
23 was for News America Marketing's other systems and
businesses.

1 Q And News America bought it with its funds
2 to develop the Aspen program for CCMi. correct?

3 A Aspen is a small part of it

4 Q But it was part of it?

5 A Supposedly Was supposed to be.

6 Q Now let's go to the second sentence of 6 8
7 Okay? Are you with me? Second sentence of
8 paragraph 6 8. are you with me?

9 A Yeah.

10 Q Okay. It says notwithstanding the
11 foregoing. the buyer shall be free to operate the
12 company and its affiliates in its sole and
13 unfettered judgement and seller shall have no claim
14 against buyer in connection therewith as a result
15 of the preceding sentence. We can agree that this
16 language is not ambiguous. right?

17 A No

18 Q You believe it's ambiguous?

19 A Yes

20 Q What do you think is ambiguous about it?

21 A It doesn't really state the substance of
22 what the judgements are. I mean. it -- it's --
23 implicit in this contract. as I've told you. is the
basis of the bargain that we made. and when we got

1 to negotiate those terms. it meant that they would
 2 execute the business plan. provide us with the
 3 sales force --

4 Q. Again. Mr. Fireman. it was just a yes or no
 5 question.

6 A. I answered it.

7 MR PETERS: No. No. Didn't you ask
 8 the question what's ambiguous about this?

9 MR KATZ: You're right I stand
 10 corrected.

11 A. I'm telling you. It's ambiguous in that it
 12 meant all those things to us and to them.

13 Q. (BY MR. KATZ) Okay let's take a look at
 14 the second part of the second sentence It says
 15 that sellers shall have no claim against buyer in
 16 connection therewith as a result of the preceding
 17 sentence Do you see that? Hello? Do you see
 18 that?

19 A. I'm looking I'm looking.

20 Q. I'm focusing on the words sellers shall
 21 have no claim against buyer in connection therewith
 22 as a result of the preceding sentence

23 A. Okay I see it

24 Q. Okay By entering the Stock Purchase

1 meant that after debate and good faith negotiations
 2 we couldn't come to some understanding about how we
 3 were going to execute the plan. they would get the
 4 final vote. only after they exercised good faith
 5 and did it. They didn't do it. So this clause is
 6 related to that

7 Q. (BY MR. KATZ) But where does it say
 8 there's going to be a vote?

9 A. I'm telling you what it meant to us
 10 Q. But where in the language does it say there
 11 was going to be a vote?

12 A. It's implicit in the language. sir
 13 Q. And what effect, if any, do you think
 14 paragraph 8 1 has on your contention that it's
 15 implicit in the language?

16 MR PETERS: Objection.

17 A. None

18 Q. (BY MR. KATZ) Do you remember getting a
 19 release from Mr. Adam and Mr. Coughlin in
 20 connection with their claim relating to their stock
 21 options in CCMi?

22 A. No

23 Q. Now, the second sentence gave News America
 24 Marketing the freedom to operate the CCMi business

1 Agreement. you promised not to sue CCMi -- not to
 2 sue NAM from any -- with respect to any future
 3 claim regarding how it ran the CCMi business.
 4 right?

5 A. Wrong

6 Q. We can agree. can we not. that the second
 7 sentence that you as the buyer signed was language
 8 which could be -- which could be viewed as a
 9 covenant not to sue. can we not?

10 MR PETERS: Objection

11 A. Absolutely not

12 Q. (BY MR. KATZ) You've seen covenants not to
 13 sue in your practice of law. right? Right?

14 A. Probably. yes

15 Q. Okay Now tell me why the language in the
 16 second sentence of paragraph 6 8 is not a covenant
 17 not to sue

18 MR PETERS: Objection You can
 19 answer

20 A. In the agreements I've seen covenants not
 21 to sue they're big headers covenants not to sue
 22 and big language and a whole paragraph This
 23 sentence relates to the sole and unfettered
 24 judgements -- I've testified here that this clause

1 in its sole and unfettered discretion. We can
 2 agree on that. can we not?

3 A. No

4 Q. Isn't that what the language of the
 5 agreement clearly says?

6 A. I answered what I think it says.

7 Q. You don't think the second sentence gives
 8 NAM the freedom to operate the CCMi business in its
 9 sole and unfettered discretion?

10 MR PETERS: Asked and answered

11 A. We had an agree--

12 Q. (BY MR. KATZ) It's a yes or no

13 A. The answer is no. I don't believe it is.

14 Q. So far as the agreement was concerned. NAM
 15 management was free to make mistakes in its
 16 management of the CCMi business. was it not?

17 A. Good faith mistakes

18 Q. NAM was free to set the budget of the CCMi
 19 business. right?

20 A. No

21 Q. NAM was free to decide where to make
 22 capital expenditures. right?

23 A. No

24 Q. NAM was free to decide when to make capital

1 expenditures right? Just yes or no

2 A No

3 Q NAM was free to decide when to make
4 additional hires. right?

5 A No

6 Q NAM was free to terminate personnel?

7 A No

8 Q NAM was free to choose who would be your
9 supervisors?

10 A No

11 Q NAM was free to determine who if anyone
12 you would supervise?

13 A No

14 Q NAM was free to decide how to brand its
15 business?

16 A No

17 Q NAM was free to determine where its
18 personnel would be located?

19 A No

20 Q NAM was free to choose what areas of CCMI's
21 business would be pursued in the future?

22 A No

23 Q NAM was free to discontinue business
24 activities of CCMI that were no longer profitable?

1 A Wrong

2 Q You clearly expressed your views. did you
3 not?

4 A Only to what I was involved in. Some
5 things were done without my knowledge. consent. My
6 role as general manager -- what's a general manager
7 with to one to manage?

8 Q You've answered the question. Let me ask
9 you the next one

10 A So how could I be consulted? If they asked
11 me a question. I gave them an answer. but after
12 three months. it was clear that they had no
13 intention of doing the deal we had agreed to in
14 good faith

15 Q Okay. And you made many phone calls
16 complaining about how the CCMI business was being
17 operated. right?

18 A We objected to the lack of attention to our
19 business. Yes. whenever we could. we wrote letters
20 of protest.

21 Q That's a yes?

22 A Okay

23 Q Just answer my question. We'll get a lot
24 further a lot quicker

1 A No

2 Q NAM was free to discontinue business
3 activities of CCMI even if they were profitable?

4 A No

5 Q NAM was accountable only to its directors
6 and shareholders for whatever mistakes it might
7 make in operating the CCMI business?

8 A Absolutely not

9 Q NAM was not accountable to you or
10 Ms. Raider for how it operated the business of CCMI
11 after it acquired the stock?

12 A Absolutely not

13 Q NAM did not need to consult with you or
14 Ms. Raider before making a decision regarding the
15 operation of the CCMI business?

16 A Absolutely not

17 Q If NAM did consult with you regarding the
18 operation of the CCMI business. it didn't need to
19 accept your opinion. did it?

20 A Not if it was acting in good faith

21 Q In point of fact. NAM did consult with you.
22 and neither you nor Ms. Raider were bashful in
23 letting the senior executives of NAM know your
24 views on the operation of CCMI. right?

1 A Absolutely protested

2 Q You sent numerous e-mails complaining?

3 A We sent letters

4 Q Complaining. right?

5 A Raising the issues of how to execute the
6 plan that was the basis of our deal --

7 Q Okay. You sent --

8 A -- and the assets we needed to do it

9 Q You sent many letters complaining. right?

10 A We sent letters objecting and asking for
11 help. yes.

12 Q You complained in person to Mr. Lellouche
13 and to other senior management at News America
14 Marketing. right?

15 A Whenever we had an opportunity.

16 Q You complained so much that Mr. Lellouche
17 said Bob. please. complain only on Fridays so we
18 can get some work done. isn't that right?

19 A Henri Lellouche said a lot of things to me
20 that if you want to go through all of them --

21 Q I've just asked you that one. Do you
22 remember Mr. --

23 A After years of disappointment. Henri used
24 to joke about the complaints. but it was the

1 complaints in the first three four months of this
 2 contract that made it clear that News America
 3 Marketing intended to never execute the plan and
 4 defrauded us in this deal

5 Q. Now, sometimes your opinion was accepted.
 6 right?

7 A. Rarely.

8 Q. And sometime it is wasn't, right?

9 A. Opinion as to what?

10 Q. On any issue that you raised

11 A. I'm the general manager of the division.
 12 I'm not allowed to know what personnel review
 13 budgets, approve anything. I have no idea whether
 14 they accepted or rejected my views.

15 Q. We can agree, can we not, that all of NAM's
 16 business decisions were designed to maximize NAM's
 17 profit, isn't that right?

18 A. No. NAM made a --

19 Q. What other purpose did NAM have?

20 MR. PETERS: Objection

21 A. NAM had a core business that they make
 22 money on. NAM -- Paul Carlucci, the chairman of
 23 this company, has no business --

24 MR. PETERS: Sorry, Gordon. You said

1 a little tin soldier, and they just were in fear of
 2 him. I dealt with Marty Garofalo off site. Why?
 3 No reason why. Just because someone said it was.
 4 and we all knew who it was, so I was asked to
 5 vacate back in '03. '04. Finally, it's like we
 6 want to buy you out of your contract or we're going
 7 to force you out of the office.

8 Q. Did anybody say that to you directly?

9 A. Yes.

10 Q. Who said that?

11 A. Marty Garofalo.

12 Q. What did he tell you?

13 A. He showed up in Boston with a release in
 14 his pocket. First we went out and we laughed and
 15 we talked about the business and all the good
 16 things ongoing. We came upstairs and he looked at
 17 me and he said I have a terrible thing to do today
 18 I believe in you, but you have to leave. When?
 19 Today. What do you mean today? I've got all this
 20 business going on. I've got all these things going
 21 on. He says I'm sorry, but I have instructions
 22 You have to leave the office. I have an employment
 23 agreement. I have an earn-out thing. How can you
 24 throw the general manager out of the thing for no

1 what other --

2 Q. (BY MR. KATZ) What other purpose? I'm
 3 getting a speech. I just want an identification of
 4 any other purpose besides profit maximization.

5 A. Yeah, we were a nuisance. Mr. Carlucci
 6 said he didn't agree to direct marketing.
 7 Mr. Carlucci never gave access to the sales force.
 8 Mr. Carlucci marginalized everything we did and he
 9 had to do it intentionally.

10 Q. You never heard him say you were a
 11 nuisance, did you?

12 A. Yes. Mr. Carlucci said he didn't like us.
 13 that he didn't believe in our business. When he
 14 was coming to the Boston office, Mr. Lellocque
 15 would instruct me to not be there when he would
 16 come visit, the chairman to talk about a town
 17 meeting. I was instructed to leave the premises.
 18 And ultimately, I was instructed to leave my own
 19 office with my employment contract and work at home
 20 and work anywhere you want.

21 Q. And why was that?

22 A. No explanation. And I could only imagine
 23 it's because Mr. Carlucci in his -- just told him
 24 get him gone, and everyone, in fear of this man, is

1 reason at all? Do you have a reason? No.

2 Q. When did this consider occur?

3 A. '03, '04.

4 Q. And where did it occur?

5 A. In the Hancock Tower.

6 Q. You said you went out to dinner with
 7 Mr. Garofalo?

8 A. I went down for lunch, told him about all
 9 the stuff going on. He got excited about
 10 everything I was doing. He knew I knew what I was
 11 doing, but he couldn't do anything about it.

12 Q. It's your testimony that Mr. Garofalo came
 13 back to the office and then said I have something
 14 bad that I have to do? Is that what he --

15 A. Wanted buy me out of my employment
 16 agreement with no consideration for the earn-out.

17 Q. So tell --

18 A. I said I'm here trying to get money for the
 19 company. He says I know it doesn't make any sense.
 20 but I have to do it. And then he got HR on the
 21 phone in New York and got me a extension. An
 22 extension why? And he said just lay low and do the
 23 stuff and try to pull these deals in. At that
 24 point in time, I had been completely marginalized.

1 from the operation. I had no secretary. I had no
 2 support I had no creative. And I was forged to
 3 do all these stored value things with strategic
 4 partners and on my own. If I needed something, I
 5 could try to get Henri to get me some support. I
 6 was completely a one-man operation as part of this
 7 \$40 billion gorilla. and I was doing pretty good.
 8 In fact, that's this news release you tell me. I
 9 got -- with people like Airtime, we landed a
 10 \$50 million contract with Ahold in the other
 11 emerging marketplace. We were the pioneers --

12 Q I'm going to cut you off here, because I'm
 13 just interested in your conversation with
 14 Mr. Garofalo. So it's your testimony that
 15 Mr. Garofalo came to Boston to attempt to persuade
 16 you to leave News America Marketing? Is that
 17 right?

18 A First to attempt to sign it and they would
 19 prepay me through the September employment
 20 agreement

21 Q Through September 2004?

22 A I don't know. It was the last year. And
 23 sign a release. And when I said I'm not doing that
 24 because I have a contract and an earn-out, he

1 inaccurate. and at our expense other people were
 2 trying to raise themselves within the company

3 Q That's what you suspect?

4 A Well, that's what happens. Mr. Lellouche
 5 told me many times that Jon Rubin was out to take
 6 my job from the beginning, from day one. Before
 7 there was Mr. Lellouche working for Mr. DeVoe,
 8 there was Mr. Rubin. Mr. Lellouche told me on
 9 several occasions Jon Rubin wanted your job. He
 10 wanted to get control of that division. and that I
 11 was lucky he left.

12 Q He left within three months of the
 13 acquisition, right?

14 A Right. And then Mr. Lellouche warned me
 15 about Mr. Rubin and then Mr. Lellouche did the
 16 exact same thing as Mr. Rubin. He undermined me
 17 with my staff, he worked to break up the
 18 organization. he took over the management of the
 19 company. and he left me a card that said general
 20 manager managing nobody. If you looked at his
 21 card, it says general manager, SmartSource Direct
 22 No conversation, no reason, no explanation, just a
 23 complete embarrassment to everybody that worked
 24 there, and all our customers and all the

1 initially got me a -- they waived it. He says I'll
 2 work with you alone and let's get some of these
 3 things going.

4 Q Okay

5 A At a subsequent period of time, they called
 6 and said you have to be out today. I mean, just
 7 embarrassing, humiliating, no reason, no cause, no
 8 -- no anything other than get out or security will
 9 have to take you to the door. And then I was told
 10 to work -- I didn't even know on what basis. I
 11 didn't sign the release. I didn't sign the
 12 contract. I was completely humiliated within the
 13 company. And I was told -- Marty said don't worry
 14 about it; we'll do some stuff. You can come to the
 15 New York office but you just can't come to the
 16 Boston office.

17 Q Did he say why?

18 A No. Just do it. Do some good stuff; I'll
 19 get you reinstated. And I already knew why. I
 20 knew why, because it was Paul Carlucci. Now,
 21 Mr. Carlucci and I didn't have a lot of dialog, but
 22 I'm sure that other people in the company were
 23 casting Ann and I in a bad light, you know, and
 24 what was getting back to higher-ups was probably

1 relationships that I had put in place, completely
 2 undermined, and not so much personal, but I mean,
 3 it goes back to your question about profit

4 Q Okay. Have you told us of every
 5 interaction that you ever had with Mr. Carlucci?

6 MR. PETERS: Objection

7 A No, I haven't.

8 Q (BY MR. KATZ) Okay. How many times did
 9 you meet with Mr. Carlucci?

10 A I don't know. Not a lot. Ten. Well, and
 11 at parties I've seen him.

12 Q How many subsequent conversations do you
 13 recall with Mr. Carlucci, if any, do you remember
 14 as you sit here today?

15 A As I sit here today? I can think of the
 16 first one.

17 Q Can you think of any others?

18 A I can think of three or four or five.

19 Q Tell me about the first one. What did you
 20 say; what did he say?

21 A The first one is when we were being -- are
 22 you ready?

23 Q Mm-hmm

24 A First one was when David DeVoe was trying

1 to finalize the acquisition of the company. He had
 2 just purchased two other companies and he invited
 3 us to meet Mr. Carlucci and Mr. Porco. Chris
 4 Mixson. the executive group.

5 Q Okay. Let me rephrase my question. Did
 6 Mr. Carlucci ever express to you directly a
 7 negative view of either yourself or Ms. Raider?

8 A Yes.

9 Q When?

10 A When we objected to the break-up of our
 11 core unit of Bill Adam. Ann and I

12 Q Was that the only time?

13 A I don't remember.

14 Q And going back to the time when you
 15 expressed concern about what you called the
 16 break-up of your group of you. Ann and Bill Adam.
 17 what specifically did Mr. Carlucci say to you?

18 A At that time?

19 Q Yes.

20 A We were called to go to the chairman's
 21 office in New York.

22 Q And can you date that time?

23 A November '99.

24 Q Okay. And what did Mr. Carlucci say?

1 you relate in the complaint as early as 1999.

2 right?

3 A Incredibly. yes.

4 Q Right after the acquisition took place.

5 right?

6 A Yes.

7 Q Okay. Now. you knew that the business
 8 world from all your experience was a rough and
 9 tumble world. right?

10 MR. PETERS: Objection.

11 A Anything's possible in the business world.

12 Some things go good and some things don't.

13 Q (BY MR. KATZ) Right. And you knew that
 14 the 1999 Stock Purchase Agreement was the result of
 15 hard bargaining. right?

16 A No.

17 Q You didn't think it was the result of hard
 18 bargaining?

19 A No.

20 Q Well. you had two high powered law firms
 21 that were involved in negotiating the agreement.

22 right?

23 A But there wasn't a lot of hard bargaining.
 24 It was a very simple deal. I mean. the issues were

1 A I mean. I don't know.

2 Q What did Mr. Carlucci say to you?

3 A He said that you shouldn't protest what the
 4 company is doing; it's not good for you. Just do
 5 what you're told and don't ever put anything in
 6 writing and it wouldn't look good if we protested,
 7 but he would see what he could do. but it wasn't
 8 looking good that we were fighting for our rights
 9 under the agreement.

10 Q Is that all he said that you remember as
 11 you sit here today?

12 A That's the gist of what -- the most
 13 important thing. He was there watching horse
 14 racing in his office as he had Aqueduct Live at all
 15 times.

16 Q Now. you met with counsel before the
 17 complaint was filed. right; the complaint in this
 18 action. right?

19 A Yes.

20 Q And the complaint was filed on or about
 21 August eighth of 2005. right?

22 A Correct.

23 Q But I think you've already told us that you
 24 in your own view began experiencing the problems

1 not voluminous. The choice for us was which
 2 partner to take the opportunity to. and when Ann
 3 and David felt they could do it together. the
 4 bargaining was not hard.

5 Q You had concerns regarding paragraph 6 8 in
 6 the agreement. right?

7 MR. PETERS: Asked and answered.

8 Q (BY MR. KATZ) That's why you had
 9 discussions?

10 MR. PETERS: Asked and answered.

11 Q (BY MR. KATZ) Right? You can answer.

12 A We had concern -- we negotiated that
 13 paragraph.

14 Q Okay.

15 A And it was -- okay.

16 Q You didn't get everything included in the
 17 agreement that you wanted. correct?

18 A I -- I wasn't -- I think it's too broad a
 19 question. Gordon. I mean. I could have asked for a
 20 hundred million dollar check attached to it.

21 Q Right. You didn't get the amount of money
 22 as the cash purchase price that you would have
 23 liked. right?

24 A We accepted a way we could get our eight

1 million if things were done as we wanted.
 2 Q. But you would have liked more cash, right?
 3 A. Yes, of course.
 4 Q. Okay. If you wanted a guaranteed level of
 5 support -- that is, support from News America
 6 Marketing for CCNI's business -- don't you think as
 7 an attorney that you should have expressly insisted
 8 that it be put in the Stock Purchase Agreement?

9 A. It was.

10 Q. Expressly?

11 A. Yes.

12 Q. Where?

13 A. Right here. 68. They're going to give us
 14 the sales force, the 200 man sales force so that we
 15 can sell our products.

16 Q. Where does it say that?

17 A. They're going to assist me in the
 18 development of the software according to my budget.
 19 I could have bought Epiphany for \$250,000.
 20 everything I needed from Epiphany, not \$2 million.
 21 And they were going to help us with the
 22 relationships. They were going to take the magic
 23 that Ann and Bill Adam and I had together and
 24 relationships we had established over four, five

1 Q. You went to dinner with Ms. Raider; isn't
 2 that right?
 3 A. It's possible. Sure.
 4 Q. She testified to that; isn't that right?
 5 A. If she did, we did.
 6 Q. You had champagne; isn't that right?
 7 A. We were on verge of a new opportunity with
 8 hopefully a partner that would keep their word. We
 9 were celebrating the wrong thing.

10 Q. You popped a bottle of champagne at the
 11 celebration, right?

12 A. No. We had a partner --.

13 Q. Please answer the question.

14 A. I don't remember having champagne.

15 Q. Did you receive a statue from your lawyers
 16 commemorating the closing?

17 A. No. That's for public offerings, I think.

18 Q. You read the complaint before it was filed.
 19 right?

20 A. Yes.

21 Q. And you familiarized yourself before it was
 22 filed?

23 A. Yes.

24 Q. You understood that it was a serious step.

1 years with every major packaged good and retailer
 2 and allow us to take advantage of the opportunity
 3 that was right there in 1999.

4 Q. Let me ask you another question. At the
 5 time of the closing of the deal, how many contracts
 6 did you have with packaged goods manufacturers?

7 A. It wasn't contracts. You would sell access
 8 to it.

9 Q. I just asked you the question.

10 A. The answer is I don't know.

11 Q. Isn't the answer three? You had three
 12 contracts with packaged goods manufacturers at the
 13 time?

14 A. I don't know.

15 Q. Well, let's take a look at the schedule.

16 A. But it doesn't matter.

17 MR. PETERS: Well, wait. Let's wait
 18 for the next question.

19 Q. (BY MR. KATZ) Well, the agreement will
 20 speak for itself, but after the deal took place and
 21 you received your approximately \$1.4 million, you
 22 had a celebration with Ms. Raider; isn't that
 23 right?

24 A. I don't remember.

1 to file a lawsuit?

2 A. Absolutely.

3 Q. It's not something that you do casually.
 4 right?

5 A. It's one of the most serious things to do.

6 Q. Right. And as an attorney, you're aware
 7 that almost all of NAM's cost and attorneys' fees
 8 could be assessed against you if the Court were to
 9 find under Rule 11 of the Federal Rules of Civil
 10 Procedure that your claims were not warranted under
 11 the provisions of that rule?

12 MR. PETERS: Objection.

13 A. I'm not here to give legal advice.

14 Q. (BY MR. KATZ) But you're aware of Rule 11.
 15 right?

16 A. I've heard of that rule, yes.

17 Q. And you're aware that NAM's costs could be
 18 over a million dollars before this is over, right?

19 A. Could be anything.

20 Q. Now, the first count of your complaint is
 21 for breach of the covenant of good faith and fair
 22 dealing, right?

23 A. Yes.

24 Q. And you allege that this breach was

1 committed by the NAM executives who ran CCMI after
 2 the acquisition. right?

3 A. I allege it's been done by NAM

4 Q. Yeah, and it was being done by executives
 5 who ran CCMI after the acquisition. right?

6 A. No. They ran NAM. CCMI. whatever. There
 7 was no CCMI. This was a hundred percent
 8 acquisition

9 Q. Right

10 A. CCMI became a wholly owned --

11 Q. Division

12 A. -- division or group of the corporation

13 I'm surprised about your other questions

14 Q. The NAM executives who made the decisions
 15 relating to CCMI were located in either New York or
 16 Wilton, Connecticut. right?

17 A. Yes

18 Q. None of them were located in Boston or
 19 elsewhere in Massachusetts. right?

20 A. Not that I know. I mean, Paul Carlucci I
 21 think was doing something at The Herald for News
 22 Corp., but I don't know of anyone else

23 Q. Now, the third count in your complaint is
 24 for declaratory judgement. Are you familiar with

1 SmartSource Direct, when they took the CCMI
 2 know-how, intelligence, IP and technology and put
 3 it into the NAM IT group, CIO group, whatever you
 4 call it, when we could see that they really were
 5 doing that to support their dot com, SmartSource
 6 dot com, SmartSource I-Group, or whatever
 7 SmartSource name they were throwing, when Ann's
 8 time was being marginalized by beginning to go and
 9 do core business and other sales things, then it
 10 was -- it became too hard to differentiate. The
 11 concept that we agreed to, that they would be
 12 running this as an independent group got destroyed
 13 after the sale.

14 Q. Where does it say that they would be
 15 running it as an independent group in the Stock
 16 Purchase Agreement?

17 A. Well, the Stock Purchase Agreement says
 18 they're going to put up a million and a half
 19 dollars of capital under the formula. That million
 20 and a half capital was my request where I had
 21 200,000 for software and I had 300,000 for this and
 22 400,000 for this and I was going to spend that
 23 within my expertise to make the plan

24 Q. But they have the right to make the

1 that with that count?

2 A. Yes

3 Q. And you claim that News America business
 4 units including the I-Group are successors to CCMI
 5 and the revenues generated by them must be included
 6 in the calculation of gross margin that determines
 7 the amounts due to you and Ms. Raider under the
 8 earn-out provision?

9 MR. PETERS: Objection.

10 Q. (BY MR. KATZ) Are you aware of that part
 11 of your complaint?

12 MR. PETERS: Objection

13 A. Yes

14 Q. (BY MR. KATZ) Do you still make that claim
 15 as you sit here today?

16 A. Yes

17 Q. Is there revenue from other NAM business
 18 units of which you were aware which should have
 19 been included in any of the five earn-out
 20 calculations?

21 A. We're alleging there is

22 Q. And I'm asking you what NAM business units
 23 are successors to CCMI

24 A. Well, when they changed the name CCMI to

1 spending decisions, don't they?

2 A. But the number came from the plan, which is
 3 implicit in the agreement, and that's the answer to
 4 the question.

5 Q. They made -- they spent more than a million
 6 and a half dollars on CCMI?

7 A. I have no idea. I'm only the general
 8 manager. I have no idea what was being spent, who
 9 was being hired, or what was being done.

10 Q. Didn't you see the amounts that were being
 11 spent in the earn-out calculations each year?

12 A. No. I didn't even find out. In one, we
 13 found out there were \$2 million in accounts
 14 receivable that weren't collected, that no one even
 15 told us, that took us over the gross and cost of
 16 hundreds of thousands of dollars, and they didn't
 17 care.

18 Q. And each year you had a chance to look at
 19 the financials for what had been CCMI, right?

20 A. Gordon --

21 Q. Wasn't that part of the earn-out
 22 discussions every year? Yes or no, please.

23 A. No, there was no discussions. They would
 24 send us something with the numbers in it, and then

1 we could try to get information to see if we could
 2 protest

3 Q And you did. did you not?

4 A But we were not provided the information
 5 all along It was always after the fact

6 Q But after the fact. you received
 7 information. right?

8 A Right They could have gone out and spent
 9 a hundred million

10 Q And you know as you sit here that they
 11 spent more than a million and a half dollars on
 12 capital improvements for CCMI. so why are we
 13 talking about this? You know that they spent over
 14 a million and a half dollars; isn't that right?

15 A They broke the deal They didn't --

16 Q I'm just talking about the million and a
 17 half dollars.

18 A No They didn't spend it on CCMI They
 19 spent it on Epiphany and what they built. and they
 20 spent a million and a half. two million dollars.
 21 and they did it without my knowledge. without my
 22 consent. and they ruined the company They never
 23 finished it They didn't get the right people on
 24 it. They delivered it 18 months late and we lost

1 because NAM made a decision not to support the
 2 legacy system Sullivan We dropped companies.
 3 They didn't care We just dropped people. They
 4 didn't care about them When we were CCMI. we
 5 cared about our clients

6 Q (BY MR KATZ) Now. we'll come back to some
 7 of these things that we've been talking about
 8 briefly. but let me ask you a few other questions
 9 When you were working for News America Marketing
 10 under your employment agreement. you were also
 11 involved in the practice of law. right?

12 A No.

13 Q Okay You kept your bar membership active.
 14 right?

15 A I kept my bar membership

16 Q Right?

17 A Yes.

18 Q And Ms. Raider said last week that you
 19 continued to do legal work for family and friends
 20 after the acquisition. You heard her make that
 21 statement. right?

22 A I heard her

23 Q And she was accurate. right?

24 A I don't know.

1 all our clients They fractionalized the business.
 2 and you know what? They didn't care

3 Q And you raised these issues --

4 A Paul Carlucci said what do I care about
 5 another hundred million dollars?

6 Q Just answer the questions And you raised
 7 these issues each year in your discussions with the
 8 financial people at New America Marketing regarding
 9 your earn-out; isn't that right?

10 A Each year we protested the amount of money
 11 that had been spent and how the million and a half
 12 dollars had been put against our earn-out and how
 13 it was unfair.

14 Q Can you identify any client of CCMI that
 15 ceased being a CCMI or SmartSource Direct client
 16 after the acquisition?

17 MR. PETERS: At any time after?

18 MR. KATZ: Yes

19 A Well. we lost Duane Reade because of the
 20 incompetency of what happened. taking away our
 21 technology

22 MR. PETERS: Right now he just wants a
 23 list of companies

24 A I don't remember. Nash Finch we lost

1 Q Okay.

2 A I don't -- you know

3 Q You kept your malpractice insurance up to
 4 date?

5 A No

6 Q You let your malpractice insurance lapse?

7 A Yes I had no active professional
 8 practice

9 Q You listed your -- your name in the lawyers
 10 book at the News America Marketing address at 200
 11 Clarendon Street?

12 A I believe I did. yes

13 Q And you did that for several years. right?

14 A I listed where my office was. yes

15 Q Right. You didn't list your home. right?

16 A No

17 Q You could have?

18 A I never have

19 Q Okay And so is it your testimony that you
 20 did not do any legal work during the period of time
 21 you were employed by News America Marketing?

22 A I don't believe I was hired as an attorney
 23 by anybody. I mean. did I help my father with his
 24 will or his trust or --

1 Q Hadn't your father passed away by the time
 2 you were working for News America Marketing?

3 A Well, during During

4 Q Didn't he pass away in 1997?

5 A No It was '99 It was just in the middle
 6 of all this. New Year's Eve. '99

7 Q New Year's Eve just before year 2000?

8 A Yeah.

9 Q So after that point in time, did you do any
 10 work for anyone, any legal work for anyone or any
 11 legal entity while you were still on the News
 12 America Marketing --

13 A My mother's -- I did personal stuff.

14 Q Did you receive any fees from any client?

15 A I don't -- I don't believe so, no

16 Q You're not sure?

17 A You're asking about five years did I do
 18 anything for someone? I don't believe so.

19 Q Did you participate in any business
 20 ventures while you were under contract with NAM?

21 A No. I invested in some things

22 Q What did you invest in?

23 A I don't remember I was investing in the
 24 stock market.

1 result of that?

2 A I don't know If you show me something, I
 3 could refresh my recollection

4 Q Did you have a lawsuit involving Lucky
 5 Stores?

6 A No.

7 Q Did you have a lawsuit regarding any
 8 customer in 1997 or 1998?

9 A You showed me one that I didn't remember

10 Q As you sit here today, you don't recollect
 11 a lawsuit that CCMI brought, perhaps outside of
 12 Massachusetts, regarding monies that you were
 13 seeking from a customer?

14 A A supermarket?

15 Q Yes

16 A I hope we didn't do that That's not what
 17 we do.

18 Q But you're not sure?

19 A I don't have any present recollection of
 20 that right now

21 Q We're going to talk a little bit about
 22 consulting marketing programs You remember that
 23 as being one of the three parts of the CCMI
 24 business, right?

1 Q Apart from publicly-traded securities, what
 2 did you invest in?

3 A I -- nothing

4 Q Nothing?

5 A I have no recollection I mean, I sold the
 6 family property I don't believe I participated in
 7 anything else.

8 Q In 1997, you had a -- you, I mean CCMI, had
 9 a big spike in its revenue You went from
 10 \$1.8 million in loyalty card revenue to 6.6 million
 11 dollars in loyalty card revenue, right?

12 A Okay

13 Q You don't remember 1997 as having a
 14 significant spike in CCMI revenue?

15 A All the revenue was insignificant to the
 16 opportunity

17 Q Just answer my question

18 A I don't know If you show me something, I
 19 could say yes or no I don't know

20 Q Do you remember there being a spike due to
 21 the roll-out of the lucky Stores loyalty
 22 card program?

23 A That was a good venue for us

24 Q How much money did CCMI bring in as a

1 A Yes

2 Q In 1998, to recap, you had \$72,000 in
 3 consulting marketing revenue, right?

4 A Right

5 Q Okay But in year one after the
 6 acquisition, you projected that that revenue was
 7 going to jump to \$3.5 million Sound right?

8 A That's correct. Yes

9 Q And in year two it was going to jump to
 10 \$13.2 million, right?

11 A If that's what it says

12 Q Okay. We can look at Exhibit 16. Do you
 13 have Exhibit 16 in front of you?

14 A I have a document that says something, page
 15 one.

16 Q And you see --

17 A I see what it says I don't know if it's
 18 ours or who did it

19 Q Okay The second page, it says Consumer
 20 Card Marketing, Inc. Doesn't that look like the
 21 font that you used to use at Consumer Card
 22 Marketing, Inc., prior to the acquisition?

23 MR. PETERS: Objection

24 A Don't know

1 Q. (BY MR. KATZ) Okay. But in year one, your
 2 revenue for consulting and marketing programs was
 3 to be 3.5 million. We can agree on that, right?
 4 Do you see it?

5 A. Revenue, consulting, 3.531

6 Q. Okay

7 A. Okay

8 Q. And then year two, 13.274.000, right?

9 A. Yes

10 Q. Year three, 19.635.000?

11 A. Yes.

12 Q. Year four, 23.622.000, right?

13 A. Yes

14 Q. And then year five, we top out at 33
 15 million, right?

16 A. Yes, that's correct.

17 Q. In other words, you projected that you were
 18 going to grow your business that you hardly had in
 19 1998 to a \$33 million business in five years.
 20 right?

21 A. Yes

22 Q. Okay

23 A. But you're --

24 Q. You've answered the question

1 MR. PETERS: Wait until the next
 2 question.

3 Q. (BY MR. KATZ) There's nothing explicit in
 4 the Stock Purchase Agreement saying that the News
 5 America Marketing sales force was required to use
 6 any percentage of its time to sell CCMI's products.
 7 right? Nothing explicit, right?

8 A. As to the percentage of the --

9 Q. Yes.

10 A. -- use of the sales force?

11 Q. Yes. Nothing explicit?

12 A. Well, I would think that if it says
 13 utilizing, maybe it infers a hundred percent unless
 14 it's delineated to be less, tacitly to be less

15 Q. But nothing explicit, right?

16 A. There's no language in there that talks
 17 about percentage

18 Q. Correct. Okay. Did you ever discuss with
 19 anyone the percentage of NAM's sales force time
 20 that might be used selling CCMI's products? That's
 21 a yes or no question

22 A. I think it was discussed, but not by
 23 percentage. It was discussed by --

24 Q. You've answered the question. You've

1 A. Yes. Absolutely yes.

2 Q. And Ms. Raider testified that she expected
 3 that News America Marketing would have its sales
 4 force use 15 percent of its time to sell CCMI's
 5 products. Remember hearing her testify to that
 6 last week?

7 A. Yes.

8 Q. Did you share that opinion?

9 A. I didn't have an opinion.

10 Q. Okay. There is, of course, nothing in the
 11 Stock Purchase Agreement saying that NAM's sales
 12 force was required to use any percentage of its
 13 time to sell CCMI's products, was there? And
 14 that's a yes or no question.

15 A. Are you saying it's not -- repeat the
 16 question.

17 Q. There is nothing in the Stock Purchase
 18 Agreement saying that the NAM sales force was
 19 required to use any percentage of its time to sell
 20 CCMI's products?

21 A. The answer is of course there is. It's
 22 implicit in the language when it says utilize sales
 23 force --

24 Q. Stop right there. Stop right there.

1 answered the question.

2 MR. PETERS: When you have an easy
 3 break, I'd like to use the men's room.

4 MR. KATZ: Okay.

5 Q. (BY MR. KATZ) What were the sales of News
 6 America Marketing, to the best of your
 7 understanding, in 1999 prior to your acquisition?

8 A. I don't know. 700 million, 800 million, a
 9 billion. I don't know.

10 Q. Could we agree that it was approximately a
 11 billion in 1999?

12 A. Yeah.

13 Q. Okay. So you would agree, would you not,
 14 that if you redeployed 15 percent of News America
 15 Marketing's sales force's time, you would be
 16 talking about taking about a \$150 million off NAM's
 17 income statement?

18 A. No, I don't agree to that.

19 Q. Isn't that right?

20 MR. PETERS: Objection.

21 Q. (BY MR. KATZ) Just a yes or no.

22 A. The answer is no. You don't redeploy
 23 there's no redeployment required.

24 Q. So they were going to be able to do all the

1 sales that generated a billion dollars of sales for
 2 the existing News America Marketing products and
 3 without any additional expenditure of time, also be
 4 able to sell your products so that you could earn
 5 the earn-out to the extent you anticipated? Is
 6 that what you're saying?

7 A Yes That product was a complete adjunct
 8 to what they were already doing.

9 Q And it wasn't going to take any additional
 10 time on their part --

11 A Just to learn it

12 Q -- in order to sell the product?

13 A Just to learn it

14 Q Once they learned it, they were going to be
 15 able to sell it?

16 A And it would help sell their other products
 17 --

18 Q That's your view?

19 A -- because that's --

20 Q Just a yes or no

21 A Yes

22 Q Prior to the acquisition, what size sales
 23 force did you believe you needed to have in order
 24 to meet the post-acquisition projections you had

1 the business plan that you've been referring to is
 2 attached to the agreement

3 A It is part of the agreement. It's
 4 implicit. It's the -- this -- the agreement is
 5 about the implementation of the plan and these
 6 clauses and these numbers are what it's referring
 7 to.

8 Q You cannot point to any express words, any
 9 explicit words in the business -- in the Stock
 10 Purchase Agreement where the business plan to which
 11 you refer are referenced correct?

12 A Yes

13 MR. PETERS: Asked and answered

14 A Yes. I can. Right here

15 Q (BY MR. KATZ) And what you're pointing to
 16 is the first sentence of Section 8.6?

17 A 6.8. and I can refer to the earn-out of
 18 2.3. Those numbers are based on the business plan
 19 and the numbers that were created by News America
 20 Marketing as the basis for this contract. This was
 21 just the formula behind the agreement --

22 Q Okay Just so long as I understand your
 23 position,

24 A -- if they want to do it in good faith.

1 set for CCM1?

2 A I don't know.

3 Q And you'd agree with me that there was
 4 nothing in the Stock Purchase Agreement requiring
 5 any size of a particular amount specified?

6 A No, I won't agree.

7 Q There is a particular number that's
 8 identified with respect to the sales force that's
 9 called for under the Stock Purchase Agreement?

10 A Yes

11 Q Where in the Stock Purchase Agreement?

12 A It's in the business plan that's implicitly
 13 made. Ann Raider and David DeVoe -- should I
 14 answer, or are you busy?

15 Q I just want to know where expressly do you
 16 find it.

17 A Ann Raider and David DeVoe did a business
 18 plan to talk about all the head count that we would
 19 need to grow the business. The head count was left
 20 out.

21 Q Please, let me stop you right there.
 22 Please show me where the business plan is appended
 23 to the complaint. I'm sorry, to the agreement
 24 Let me rephrase the question. Please show me where

1 (Off the record)

2 (Recess taken)

3 Q (BY MR. KATZ) Mr. Fireman, could you tell
 4 me, what specific products were to be sold by the
 5 CPG sales force at News America Marketing?

6 A Yes

7 Q Just identify them, the products, and I'm
 8 referring to the CCM1 products

9 A Targeted marketing products

10 Q Direct mail, right?

11 A Either individually or in concert with
 12 supermarkets, yes

13 Q And there were no products other than that,
 14 right?

15 A Well, yeah, there were promotions and other
 16 types of things, but all these products are tied
 17 together.

18 Q It was all direct mail, right?

19 A No, it was not all direct mail. It was to
 20 start with direct mail. It could be in-store
 21 promotions; it could be tied to the loyalty cards
 22 It's all around the cards. The cards are connected
 23 to the analytical tool to the promotion. When
 24 somebody knows who bought Ivory and who bought

1 Dial. who bought Skippy and who bought Peter Pan.
 2 the whole world of micro-marketing was available;
 3 direct mail. in-store. point of sale. e-blast.
 4 Internet. it all tied around clubs

5 Q So the idea was that you were going to take
 6 the information that you had about consumer
 7 preference that was gleaned either from the loyalty
 8 cards or from other data that the retailer would
 9 provide you and -- correct?

10 A Yes.

11 Q And you were going to use that information
 12 to interest CPG manufacturers on some kind of
 13 promotional program for customers. right?

14 A Yes.

15 Q And that's the idea?

16 A The ability -- the ability to be in a Star
 17 Market -- for an Ivory coupon to be in a Star
 18 Market envelope going to a Dial soap user. the
 19 ability to track that that person actually used the
 20 coupon and the ability to watch your soap purchases
 21 over the next two weeks. four weeks to know you
 22 could get her to buy it once or twice or three
 23 times. and once someone bought it three times. Dial
 24 has a lifetime customer. because how often does

1 Q But it all boiled down to targeted
 2 marketing of retail customers?

3 A One-to-one marketing and getting to an
 4 actual consumer based on who they are and what they
 5 buy. That was the dynamic of what was happening
 6 And Gordon. when you look at the numbers --

7 Q Okay There's no question pending

8 A All right

9 Q Let me ask you this question You're
 10 familiar with the Aspen system. right?

11 A I know what it is.

12 Q Okay

13 A Familiar?

14 Q How many retailers signed on to the Aspen
 15 system?

16 A I don't know of any

17 Q How many?

18 A It was -- it was a disaster. It never
 19 worked I don't know of any I was removed from
 20 that aspect of the business, no one reported to me.
 21 and it was 18 months late and it didn't work. And
 22 nobody was responsible

23 Q Mr. Fireman. I'm showing you a document we
 24 marked as Exhibit 46 It is a summary of the

1 someone change their soap.

2 Q It was all direct -- it was all targeted
 3 marketing. right?

4 A But it was based on actual purchase
 5 behavior. which was available for the first time

6 Q And that's what permitted you to target?

7 A Yes.

8 Q And there were no products that CCMI
 9 offered other than this targeted marketing feature.
 10 right?

11 A No.

12 Q No products to CPG manufacturers other than
 13 the targeted marketing?

14 A Well. there was participation in the clubs
 15 that were being formed around the loyalty programs.
 16 kids clubs. promotions. We now know who had kids
 17 and who didn't have kids. We now could segment
 18 best shoppers from no shoppers. We now could show
 19 retailers where their best shoppers were and how
 20 much money they spent and how profitable they were
 21 on a basket. We now could show them that their
 22 worst customers were in express lines getting good
 23 service while their best customers were sitting ten
 24 lines deep waiting to be served.

1 Q earn-out payments which you and Ms. Raider
 2 received. Do you remember seeing this document
 3 last week?

4 A No.

5 Q Take a look at it now. You don't have any
 6 reason to question the numbers on Exhibit 46
 7 accurately reflect the earn-outs that you received
 8 over the five-year earn-out period. right?

9 A I have no knowledge I don't have any
 10 reason to question it if you're telling me that's
 11 what they say

12 Q Each of you and Ms. Raider received an
 13 earn-out payment each year. right? Right?

14 A I don't know. One two. three. four. five
 15 -- according to the document. yes.

16 Q Okay And when we look back at the five
 17 years of earn-out discussions. you'd agree with me
 18 would you not. that you and Ms. Raider's exchanges
 19 about your disagreements with NAM executives about
 20 the earn-out were always professional right?

21 A My dealings with News --

22 Q Yes

23 A -- or their dealings with me?

24 Q Everyone's dealings were on a professional

1 basis?

2 A I don't believe that they were fair I
3 don't believe that they were open. I believe that
4 if there was an accounting error within one of the
5 small numbers, they made some adjustments I
6 believe that their --

7 Q Adjustments in your favor?

8 A No there were adjustments against us I
9 believe that they were using the accounts
10 receivable that were outstanding --

11 Q Just answer the question

12 A The answer is no I don't believe they were
13 fair.

14 Q They were always courteous to you, they
15 being the NAM executives who you dealt with on your
16 earn-out, isn't that right?

17 A You mean it wasn't courteous?

18 Q Yeah They were courteous?

19 A They just did what they wanted to do, they
20 took the positions they wanted to take, and they
21 were inflexible on the issues that were important
22 to us. Did they yell at us? I don't remember any
23 screaming sessions Courteous? They politely blew
24 a lot of money for themselves and us

1 calculation, you never brought suit, right?

2 A Not until the present day

3 Q Until the present day?

4 A Right

5 Q You never brought suit against NAM until
6 after your five-year employment agreement was over.

7 right?

8 MR. PETERS: Inconsistent with his
9 testimony

10 A I didn't --

11 Q (BY MR. KATZ) Apart from the 1999 suit,
12 which was never served?

13 A I testified Ann Raider had two kids in
14 college and we waited until she was out of harm's
15 way.

16 Q Okay And you've retained every dollar
17 paid you by NAM, correct?

18 A I don't understand the question.

19 Q You didn't offer to give back any of the
20 money that NAM paid you --

21 A No. I didn't give NAM back any money

22 Q -- if they would undo the deal, right?

23 A It never was discussed

24 Q You personally never offered to give back

1 Q Now, you never engaged an accountant to
2 discuss disputed issues with NAM's accountant
3 pursuant to the Stock Purchase Agreement's earn-out
4 dispute resolution procedure, right?

5 A Engage an accountant?

6 Q Yes

7 A No

8 Q And of course, there was never a need to
9 engage a third accountant to resolve any disputes
10 between the accountants, right?

11 A Right The issues were settled, but they
12 weren't according to GAAP I mean, if we worked
13 according to GAAP --

14 Q You've answered the question. And you
15 never brought suit against NAM regarding any of the
16 complaints which you expressed in your letters
17 following the years one and two earn-out
18 calculations?

19 A I've already testified I did bring suit I
20 just didn't serve it

21 Q But that was before the year one earn-out
22 calculation, right?

23 A Yes

24 Q Okay So after the year one earn-out

1 what you received in stock, or received for your
2 stock if they would undo the deal? Just yes or no.

3 A I would have done that in a heartbeat if
4 they could undo the deal They couldn't give me
5 back what I gave them

6 MR. PETERS: Just yes or no

7 A No

8 (Exhibit 80 marked for identification)

9 Q (BY MR. KATZ) Okay I'm going to show you
10 a document marked Exhibit 80, and can you identify
11 this document for us? Is this your handwriting?

12 Hello?

13 MR. PETERS: He's reading

14 MR. KATZ: Okay

15 Q (BY MR. KATZ) Is this your handwriting?

16 A Yes

17 Q Okay

18 A I believe so

19 Q And when did you prepare this document?

20 A No idea.

21 Q Do you remember why you prepared this

22 document?

23 A No. I mean, I think I wrote this down

24 because I was just general manager of a division

1 that's about to be changed into another whole
 2 organization and I have no knowledge and consent.
 3 and I guess when Henri told me that -- this is the
 4 first time. one of the few times he was honest with
 5 me -- there's a conflict and he couldn't tell me
 6 what it was

7 Q Could you read this into the record?

8 A On Monday. executive conference. I don't
 9 know the date 4/3 I don't know the year. I
 10 learned that the broadcast -- every Monday they had
 11 a --

12 MR PETERS: Just read it

13 A SmartSource Interactive had been formed as
 14 a division to pursue the original CCMI plan and
 15 that Chris Mixson had been appointed president. I
 16 asked Henri Lellouche why I was learning about this
 17 key strategic decision when announced to the press
 18 It was only one week earlier that I had told Henri
 19 that we needed the support of Chris Mixson and the
 20 manufacturers sales force to be successful. Henri
 21 told me at the time that Chris was busy making the
 22 company plan of -- it says 370 million or -- I
 23 can't read it -- and our business was not a
 24 priority I guess that wasn't true a week ago

1 do? What was his job?

2 A Kevin Tripp was -- I think he was hired
 3 about the time of the sale. We were looking to --
 4 we needed expertise on how to formulate the
 5 materials and the plan and the products to go to
 6 the CPG force. It wasn't that he could call --
 7 being 240 places at once His role was to organize
 8 the products and the coordination of that effort to
 9 the sales force When we got no sales force. he
 10 was the sales force. and from time to time. he
 11 would get someone added to help him

12 Q Was he successful?

13 A Yes Well the whole thing -- I don't
 14 know. I don't know how you're going to gear
 15 success.

16 Q In your view. was he successful?

17 A No. he wasn't successful. because we didn't
 18 get the cards out there We lost our card
 19 business. We didn't get our software working. We
 20 lost our market share. We lost our wind And him
 21 with a couple guys was a Band-Aid on an artery.

22 (Exhibit 81 marked for identification)

23 Q Let me show you a document we've marked as
 24 Exhibit 81 And when was this prepared? Do you

1 Accordingly. I asked Henri why something were not
 2 involved -- why Ann and I were not involved in the
 3 management decisions that affect the original CCMI
 4 business Henri told me that we had a conflict of
 5 interest with the company. I asked him what that
 6 was. He told me it was our earn-out from the sale
 7 of the company I told him it was based upon a
 8 mutual effort to maximize sales and profits; how
 9 could that be a conflict He wouldn't say I
 10 asked him if there was a conflict why didn't NAM
 11 sit down. discuss how to fix it I asked him if
 12 our earn-out would be based upon the whole sales of
 13 SmartSource Interactive. I-Group He said yes. it
 14 would be I told him Paul Carlucci in the meeting
 15 the week before said that he would make sure that
 16 our earn-out was addressed End of memo

17 Q (BY MR KATZ) And you don't remember when
 18 you prepared this?

19 A Well. it's -- it would be tied to the
 20 formation of the S S I group. so --

21 Q And when do you think that occurred?

22 A I don't remember

23 Q Let me ask you another question Going
 24 back to the CPG sales force. what did Kevin Tripp

1 know?

2 A I don't know

3 Q Can you read this document into the record.
 4 because again. I can't read your handwriting.

5 A On 5/2 May fifth. executive meeting day. I
 6 learned that Kevin Tripp and our manufacturers
 7 sales effort for CCMI was reporting to Marty
 8 Garofalo at S S I and not to Ann over the
 9 objection of Kevin himself -- over the objection of
 10 Kevin himself We were not asked our opinion as to
 11 this act. We were not told how it would affect our
 12 earn-out We still have no revenue numbers. We do
 13 not know where or when or how decisions are being
 14 made Bill Adam and our tech team are not
 15 providing us any information about their
 16 Connecticut move. Henri -- I don't know Henri
 17 Lellouche and Rick Rossman are working them
 18 directly and intentionally leaving us out of the
 19 loop. At the meeting. I learned that Bill had his
 20 house up for sale I was told that Charles Pappas
 21 would be terminated and four weeks notice. I asked
 22 who would do his job and got no response I was
 23 told that the -- the -- I can't read that word --
 24 something would be done by Mark in Connecticut I

1 said how would he know how to do what Bill with the
 2 system other than Robert Coughlin in place I was
 3 told that it would be handled I asked Henri for
 4 Bill's help on the e-gift RFP. He said that Bill
 5 would have no time to help. I asked what technical
 6 support would replace Bill There was none at this
 7 time. I said we need to grow the manufacturing
 8 consulting account support to deliver service to
 9 our clients Henri refused to offer support. I
 10 said that our business was being steamrolled.
 11 That's the way it is No response that's the way
 12 it is was the answer At the meeting we learned
 13 that NAM was negotiating for an office space in
 14 downtown Boston. I told them that our employees
 15 who were on the South Shore most likely won't come.
 16 Henri said he would get one admin person -- we
 17 would get one admin person I said to run what I
 18 did not know who would be left when he was
 19 finished Henri has completely undermined our
 20 authority our ability to manage and our ability to
 21 close business develop new products or drive
 22 revenue or manage our business.

23 Q. And did you show this memo to anyone?

24 A. Not that I remember

1 retailers had their own loyalty marketing groups
 2 This business cycle had now become a hundred
 3 million dollar business and the people that knew
 4 something about it weren't going to work for us any
 5 more.

6 (Exhibit 84 marked for identification)

7 Q. Let me show you Exhibit 84 This came from
 8 your file right?

9 A. I don't know

10 Q. Well it has the Bates stamp FR 3401 on it?

11 A. All these are from my files? Yeah.

12 Q. Well because it has FR in the corner means
 13 it came from your file right?

14 A. Right

15 Q. And this was an organizational chart that
 16 was prepared after the acquisition right?

17 A. Do not know

18 Q. Well it lists -- it identifies Kevin

19 Tripp? Do you see Kevin Tripp listed?

20 A. I'm not sure if he just came with us our --
 21 I believe we contacted Kevin directly before the
 22 acquisition

23 Q. Kevin Tripp didn't start until after the
 24 acquisition was over You know that don't you?

1 (Exhibit 82 marked for identification)
 2 Q. Let me show you a document that we've
 3 marked as Exhibit 82 This is an e-mail from
 4 Ms. Fireman to you
 5 A. Ms. Raider
 6 Q. I'm sorry; Ms. Raider to you Do you
 7 remember when this e-mail was prepared?

8 A. No. There's no date on it

9 (Witness reading)

10 A. I don't remember I mean it obviously
 11 talks four years so probably sometime in '03 and
 12 speaks to the fact that people in the core business
 13 didn't really understand our business or want to.

14 (Exhibit 83 marked for identification)

15 Q. I'm going to show you a document we've
 16 marked as Exhibit 83 This is another e-mail which
 17 Ms. Raider sent to you?

18 A. Purports to be yes

19 Q. Do you know why she sent it to you?

20 A. She was venting

21 Q. Okay

22 A. I mean she was -- the expertise that we
 23 had with the people who called on retailers was
 24 important to keep the retailers -- by this time.

1 A. I just said I don't know that He's
 2 somebody that I believe we got before

3 Q. But this is -- do you see anyone listed on
 4 this organizational chart that was not with you
 5 when the acquisition took place?

6 A. I don't understand the -- what this
 7 document is or the question

8 Q. Do you see anyone listed on this
 9 organizational chart who was not with you when the
 10 acquisition took place?

11 A. Who was not with us?

12 Q. Yes.

13 A. So everybody on here was with us?

14 Q. You think everybody --

15 A. I don't remember I don't remember all the
 16 names.

17 Q. You're not sure whether Kevin Tripp was
 18 right?

19 A. I believe that we got -- Kevin moved here
 20 -- he was from Campbell sales. He was a friend of
 21 somebody and we had him before the sale. Maybe he
 22 started just after but it was a process

23 Q. What office did he operate out of?

24 A. He came from Boston His wife was from

1 Walpole. He used to work for Campbell Soup down in
 2 Maryland someplace

3 (Exhibit 85 marked for identification)

4 Q. Let me show you a document that we've
 5 marked as Exhibit 85. This is a May 27th, 1999
 6 memo from Julie Openshaw, and in the memo, she
 7 recounts a visit on May 24th and 25th, 1999. Do
 8 you see that?

9 MR. PETERS: You have to read the
 10 document

11 A I see the document. It's to David DeVoe,
 12 Heather Harde from Julie Openshaw

13 Q. (BY MR. KATZ) And this was a memo that was
 14 being prepared at News America Marketing for its
 15 due diligence purposes? Would you agree with that?

16 MR. PETERS: Objection

17 A Don't know

18 Q. (BY MR. KATZ) Okay. The memo shows that
 19 CCMI was having a very poor first quarter in 1999.
 20 correct?

21 MR. PETERS: Does the document say
 22 that? Objection to any question other than that

23 A I don't see that.

24 Q. (BY MR. KATZ) Okay. Could you take a look

1 annualized \$574,000 as your quarterly revenue and
 2 annualized it, you would be under \$2.5 million.
 3 right? Correct?

4 A Assuming -- yes

5 Q. Okay. And that would be about a 50 percent
 6 drop in terms of your gross revenue as measured in
 7 1998, right?

8 MR. PETERS: Objection

9 A No, it would not

10 Q. (BY MR. KATZ) Well, what's your
 11 explanation --

12 A 2.5 as opposed to 3.8 is more than
 13 50 percent by the math.

14 Q. Okay. So what percentage of a reduction in
 15 revenue --

16 A I don't know if it was.

17 Q. -- would the annualized number be from your
 18 -- your annualized number for 1999 be with respect
 19 to your 1998 revenue?

20 MR. PETERS: I'm afraid I don't
 21 understand the question

22 Q. (BY MR. KATZ) You don't understand the
 23 question?

24 A You would divide 2.5 by 3.8. Give me a

1 at the second -- or make that the third bullet
 2 point?

3 A In the number -- which number?

4 Q. Under number one. It says in quarter one,
 5 '99, CCMI has completed one new implementation for
 6 Wegman's which generated \$383,000 or 67 percent of
 7 the total \$574,000 revenue for the quarter. Do you
 8 see that?

9 A Yes

10 Q. Okay. And if -- during 1998, I think we
 11 already established that your revenue for the
 12 entire company was \$3.7 million, right? Right?

13 A I don't remember

14 Q. Do we need to go back to Exhibit 16?

15 A Assuming it's 3.8 million, what's the
 16 question?

17 Q. Okay. If you take \$574,000 as your first
 18 quarter revenue and you annualize it for the whole
 19 year, you're talking about revenue that's under
 20 \$2.5 million for the entire year, right?

21 A If it stays the same

22 Q. Right

23 A Why would you assume it would?

24 Q. Well, let's assume it did. If you

1 calculator

2 Q. All right. I don't know if we need to do
 3 the math, but we do know that 2.5 is less than 3.8.
 4 right?

5 MR. PETERS: We'll stipulate.

6 MR. KATZ: All right

7 Q. (BY MR. KATZ) And we know that your
 8 revenue in 1998 of 3.8 was less than the revenue
 9 that you had in 1997, right?

10 A. Yes.

11 Q. Okay. Now, the -- Exhibit 85 indicates
 12 that there was a rent payment of \$72,000 a year
 13 that was being made to your father's estate by
 14 CCMI; was that correct?

15 MR. PETERS: That's on page two, bullet
 16 point number four? Is that where he should look
 17 Gordon, under building lease?

18 MR. KATZ: Yes. I think it's bullet
 19 point five

20 MR. PETERS: Under number four.

21 MR. KATZ: Under number four on page
 22 two of the memo

23 MR. PETERS: Your question was was CCMI
 24 paying 72,000 a year to --

1 MR. KATZ: That's right

2 MR. PETERS: -- Harry Fireman or some
3 Fireman entity?

4 MR. KATZ: Right

5 A I don't remember. Six thousand a month.
6 that's probably right I remember my father --
7 that was the day he died.

8 Q. (BY MR. KATZ) And you were a beneficiary
9 of the estate?

10 A. No

11 Q. You were not a beneficiary of the estate?

12 A. No.

13 Q. Was any entity of which you were a
14 beneficiary a beneficiary of the estate?

15 A I don't know what you said

16 Q Let me reask the question. Did you have
17 any interest in that \$72,000 a month rent?

18 A. No

19 Q Who was getting the \$72,000 a month rent?

20 MR. PETERS: \$72,000 a year

21 Q (BY MR. KATZ) I'm sorry \$72,000 a year.

22 A At the time of this document?

23 Q Yes

24 A. My father Subsequent to that, it went to

1 Mr. DeVoe back to Mr. Charm. And you are copied on
2 this e-mail. correct?

3 A It purports to send a copy to me
4 MR. PETERS: Gordon, just for my
5 clarification, there's no document control number
6 on this. Is this a document that was produced or
7 are you just producing it now?

8 MR. KATZ: No, this was a document that
9 we produced, but was not copied

10 MR. PETERS: Oh, we've had this
11 conversation already in the Coughlin deposition.

12 MR. KATZ: Right. You may find
13 documents here that -- and there probably are other
14 documents, that were among the documents that were
15 in the files which --

16 MR. PETERS: We reviewed but didn't
17 take

18 MR. KATZ: -- your client reviewed but
19 didn't take.

20 MR. PETERS: I understand. Thank you.

21 Q (BY MR. KATZ) And I call your attention to
22 first the e-mail from Mr. Charm to Mr. DeVoe. Do
23 you see where he says we need a statement that News
24 America will invest at closing \$1.5 million as

1 my mother

2 Q. Okay. And so your mother was -- your
3 mother received all the rent from the building
4 after your father passed away; is that right?

5 A Until we left, yes

6 Q Until you left. And you personally never
7 received any --

8 A. No.

9 Q -- of the money that came from the rent?

10 A We were paying like \$3 a foot. We moved
11 into space that was \$48 a foot

12 Q But you weren't paying for it? News
13 America Marketing was paying for it, right?

14 A Well, I paid for it up until the closing of
15 the sale, and then I don't know how they -- I don't
16 know if I paid for it. Gordon, because we didn't
17 get any of the financials of what was being paid
18 for. Yeah, I believe that CCMI was paying a
19 division of the \$48,000 a month in rent that was
20 being charged at the Hancock.

21 (Exhibit 86 marked for identification)

22 Q Let me show you Exhibit 86. Exhibit 86 is
23 a June 23, 1999 e-mail, actually two e-mails, one
24 from Mr. Charm to Mr. DeVoe and the other from

1 hinted at in the definitions?

2 A. I see it

3 Q. And then Mr. DeVoe says back 1.5 million
4 will not be infused into the building at closing
5 Capital spending is managed centrally and funds are
6 distributed when approved. Do you see that?

7 A. Yes.

8 Q. Were you concerned when you saw Mr. DeVoe
9 taking this position?

10 A. No, not at all. David and I agreed on how
11 we were going to spend the 1.5. I didn't need it
12 at the closing.

13 Q. Okay. In addition, Mr. Charm says salaries
14 of \$175,000; do you see that?

15 A. No

16 MR. PETERS: 11

17 Q (BY MR. KATZ) In number 11?

18 A. Okay.

19 Q. Do you see that?

20 A. Yes

21 Q. And then Mr. DeVoe says salaries, if you
22 refer to initial LOI, base is 160; do you see that?

23 A. Yes.

24 Q. Do you have a copy of the initial LOI?

1 A No
 2 Q Do you know what he's referring to when he
 3 says --
 4 A letter of intent
 5 Q But you don't have a copy of it?
 6 A No. I mean, I don't have a copy of
 7 anything, not even my own memos
 8 Q Okay. Item number 12. Mr. Charm says
 9 lastly, Bob and Ann need a statement that News
 10 America and the new CCMI will undertake a best
 11 efforts to have its salespeople at no cost to CCMI
 12 sell for CCMI and that News America will not hinder
 13 CCMI and the shareholders from earning additional
 14 purchase price. Do you see that?
 15 A Yes
 16 Q Okay. You'd agree with me that there's
 17 nothing in the stock transfer -- the Stock Purchase
 18 Agreement about News America Marketing using best
 19 efforts to have its salespeople sell for CCMI.
 20 right?
 21 A No. Don't agree.
 22 Q The words best efforts are nowhere used in
 23 the Stock Purchase Agreement, are they?
 24 A No, no, but I don't --

1 They're a company down in Houston
 2 Q So you withheld payment and --
 3 A I don't remember. I'm just speculating.
 4 Q Do you think you withheld payment to
 5 Personix?
 6 MR. PETERS: Don't speculate. Testify
 7 to the best of your knowledge
 8 A I don't remember.
 9 Q (BY MR. KATZ) Paragraph four, that is
 10 located on the second page of the memo, says News
 11 wants the right to cancel CCMI's real property
 12 lease without penalty on 30 days notice to
 13 landlord. Do you see that?
 14 A Yes.
 15 Q Did you ask why News wanted that provision?
 16 A Did I ask why?
 17 Q Yes.
 18 A I don't remember if I asked why.
 19 Q You knew, did you not, that there was a
 20 good chance that News America Marketing was going
 21 to have CCMI move to other space?
 22 A Yeah, we were -- yes, I did. I knew there
 23 was discussion about consolidating the sales with
 24 their other office that was downtown and they had

1 Q Just yes or no, please. Yes or no.
 2 A Well, you're just taking best efforts?
 3 Q I'm just taking best efforts.
 4 A Using the sales force is in the agreement.
 5 Q Just best efforts, yes or no?
 6 A I don't see best efforts in 60.
 7 Q Thank you.
 8 (Exhibit 87 marked for identification.)
 9 Q Let me show you a document that we're
 10 marking as Exhibit 87. What was the Personix
 11 settlement? What was the Personix settlement?
 12 P-E-R-S-O-N-I-X
 13 A Don't know. Personix was a card
 14 manufacturer.
 15 Q What's the remaining liability that's being
 16 discussed in this memo?
 17 A I don't remember.
 18 Q Did you sue them or they sue you?
 19 A Oh, Personix? No. We settled.
 20 Q What did you have to settle?
 21 A I think they must have not produced some
 22 products correctly and we were looking for some
 23 credit, but we owed them some money. I think that
 24 was resolved. I don't think we ever sued Personix.

1 to relocate.
 2 Q And you knew that prior to the Stock
 3 Purchase Agreement being signed, right?
 4 A I didn't object to this. I mean, I was
 5 charging below market rent.
 6 Q I'm just saying you knew it in advance of
 7 the sale?
 8 A Yes.
 9 Q So it didn't come as a surprise to you when
 10 News America Marketing decided that it wanted to
 11 move to the Hancock building, right?
 12 A Yes, it did, to the Hancock building.
 13 That's a different question.
 14 Q Let me show you Exhibit 88.
 15 (Exhibit 88 marked for identification.)
 16 Q And Exhibit 88 is a memo -- two memos,
 17 actually. The second page is a memo of July 9th,
 18 1999 to Les Charm from Dave DeVoe and the first
 19 page is a July 12th, 1999 e-mail from Les Charm to
 20 Dave DeVoe. And if I can call your attention to
 21 the July 9th, 1999 e-mail, if you would take a look
 22 at --
 23 A Which one is that, Gordon?
 24 Q That's the second page.

1 A Yeah. Okay. This is from Charm to DeVoe
2 and this is from --

3 Q And the subject is margin.

4 A Yeah.

5 Q Do you see it? And it says paragraph
6 three. intentions language. not comfortable. will
7 be worked through I believe I provided a fair
8 offer. a free look for Ann and Bob at the end of
9 year two that would enable them to leave the
10 company and collect one year of base compensation.
11 forfeit earn-outs in years three through five.
12 non-compete list after that year. continuation of
13 employment in years four and five at News' option;
14 do you see that?

15 A Yes

16 Q And had you seen this e-mail at or about
17 the time it was sent?

18 A No

19 Q You don't think Mr. Charm forwarded it to
20 you at or about --

21 A I don't believe he did

22 Q -- the time it was sent in July of 1999?

23 A I don't know

24 Q Wasn't it Mr. Charm's practice to keep you

1 Q And so was your attorney at Goodwin.

2 Procter & Hoar?

3 A Yes

4 (Exhibit 89 marked for identification)

5 Q And Exhibit 89 is an e-mail. subject CCM1.
6 from Les Charm to Dave DeVoe with a copy to
7 Mr. Fireman and Mr. Duggan at Goodwin Procter?

8 MR. PETERS: I just -- I want the --

9 Q (BY MR. KATZ) Do you remember seeing this
10 e-mail?

11 MR. PETERS: -- the record to reflect
12 that I'm going to reserve my objection on 88 unless
13 someone can authenticate this as an e-mail that
14 belongs together. I'm not doubting you. Gordon.
15 but I'm in the document business. too. and things
16 get stapled together that don't necessarily belong
17 together and I don't want my silence to be some
18 kind of indication that I think this as produced is
19 authentic I'm not suggesting anything nefarious
20 It's more or less a reminder to myself

21 MR. KATZ: Okay

22 MR. PETERS: Do you have 89 for me?

23 MR. KATZ: Yes.

24 A Is there a question?

1 and Ms. Raider in the loop on all of his
2 discussions with Mr. DeVoe?

3 A No.

4 MR. PETERS: Gordon. it doesn't appear
5 to me that this page one goes with two and three
6 I'll obviously take you at your word. but they look
7 like different documents. One looks like it's
8 faxed. page two and three. but the first page
9 doesn't look like it's part of the fax. Maybe it
10 is

11 MR. KATZ: Yeah. I think they go
12 together. so that's why they're grouped

13 MR. PETERS: Okay

14 MR. KATZ: Okay?

15 MR. PETERS: As one document. as some
16 e-mail string?

17 MR. KATZ: Yes

18 Q (BY MR. KATZ) Were you aware of
19 Mr. Charm's e-mail back to Mr. DeVoe on July 12th.
20 1999 with the subject CCM1?

21 A No

22 Q You were copied on this e-mail. correct?

23 A It shows it. but I have no present
24 recollection of this e-mail.

1 Q (BY MR. KATZ) Do you remember receiving
2 this e-mail?

3 A No. I have no present recollection.

4 Q There is language in here which says it
5 seems clear where we are headed. Not a lot of
6 protection to Ann and Bob. Do you see that?

7 A Yes.

8 Q Okay. What -- do you have any recollection
9 as to having seen that language before?

10 A No

11 Q Do you remember ever having a discussion
12 with Mr. Charm as to why he used that language in
13 this e-mail?

14 A No.

15 Q It then goes on and says so give us as much
16 as you will now and let's not spend a long time
17 talking about -- with respect to the 1.5 --

18 \$1,500.000 clause as I call it; do you see that?

19 A Well. that's what it says. I mean.
20 obviously --

21 Q Do you remember having any discussion with
22 Mr. Charm or anyone else about what he meant in
23 using those words?

24 A He wanted -- I mean. I don't remember

1 anything specific. It looks like he and David were
 2 trying to figure out how to get this done. It
 3 looks like they were exploring alternatives to
 4 gross margin. It looks like he wanted the 15 at
 5 least delineated somehow, but they were working
 6 this out.

7 Q It goes on to say words from you would be
 8 helpful like some words about good faith, no
 9 diverting business from CCMI to other divisions or
 10 taking elsewhere. State that the plans are to use
 11 salespeople of other divisions, no allocation of
 12 cost or purchasing profits ending up elsewhere, et
 13 cetera. Do you see that?

14 A Yes.

15 Q You would agree with me, would you not,
 16 that the words good faith do not appear in
 17 paragraph 6.8 of the Stock Purchase Agreement? Yes
 18 or no?

19 A But I believe they're implicit.

20 Q I said you would agree with me, yes or no,
 21 that the words good faith do not appear expressly
 22 in paragraph 6.8?

23 A Explicitly, they don't appear.

24 Q And there's no language in paragraph 6.8

1 Q And it is two e-mails, one from you,
 2 Mr. Fireman, to Mr. DeVoe dated Thursday, July
 3 29th, 1999, and then a response from Mr. DeVoe
 4 dated Saturday, July 31, 1999. Do you remember
 5 sending this e-mail to Mr. DeVoe? Have you
 6 finished reading the document?

7 A No.

8 Q I'm not going to ask you many questions
 9 about it, so let me -- in fact, I'm only going to
 10 ask you one or two. In your e-mail of Thursday,
 11 July 29th, 1999, you were making some suggestions
 12 as to how you thought gross margins should be
 13 defined in the Stock Purchase Agreement, right?

14 A No. I think we were trying to define what
 15 expenses should come off the top and how GAAP would
 16 apply.

17 Q And that all related to how gross margin
 18 was going to be defined in the stock purchase
 19 agreement, right?

20 A No, just in general. I mean, this was more
 21 of a business -- get clarity on the basis of the
 22 bargain is what I'm talking about today.

23 Q In any event, isn't it a fact that
 24 Mr. DeVoe in his e-mail back to you on Saturday

1 about no diverting business from CCMI to other
 2 divisions or taking elsewhere, correct?

3 A That's correct.

4 Q It goes on to say, Mr. Charm does, state in
 5 the agreement that you think the budgets are fair
 6 and reasonable from what you know about other
 7 companies in the News America package and that they
 8 are reasonable given the growth rate that everybody
 9 is expecting. Do you see that?

10 A Yes.

11 Q Okay. And you'd agree with me, would you
 12 not -- again, please answer yes or no -- that there
 13 is nothing in the Stock Purchase Agreement that
 14 discusses the budgets being fair and reasonable
 15 from what you know about other companies in the
 16 News America package and that they are reasonable
 17 given the growth rate that everybody is expecting?

18 MR. PETERS: Is that language in the
 19 contract, that's Mr. Katz's question.

20 A It's not in the contract. I don't even
 21 know what it means.

22 Q (BY MR. KATZ) I'm going to show you a
 23 document that we're marking as Exhibit 90

24 (Exhibit 90 marked for identification.)

1 July 31, 1999, basically said no to all your
 2 suggestions? He said I believe the margin
 3 definition as worded is accurate and represents the
 4 deal structure that NAM is willing to close on with
 5 CCMI; isn't that right?

6 A That's what he said at this moment in time.

7 Q And you interpreted that as a rejection of
 8 all the requests that you were making in your
 9 e-mail of July 29th, 1999; is that right?

10 A No. This was everybody working to try to
 11 come to an acceptable arrangement. I mean, I was
 12 making suggestions, we were making suggestions, and
 13 David was making suggestions. Maybe not here
 14 (Exhibit 91 marked for identification.)

15 Q Let me show you a document that we've
 16 marked as Exhibit 91. This is a letter from you to
 17 Mr. DeVoe dated October 22, 1999. The deal had
 18 just recently closed, right?

19 A Yeah.

20 Q And you wanted more support from NAM more
 21 quickly because you wanted to maximize your
 22 earn-out numbers, right?

23 A No. We wanted to build the business and
 24 maximize our earn-out numbers. When we made good

1 numbers. they were making good numbers
 2 Q And you know that the hardware for Duane
 3 Reade had been ordered, right? I call your
 4 attention to the third paragraph It says the
 5 hardware for Duane Reade was finally all ordered on
 6 October 18th. right?

7 A That's what it says. I don't remember
 8 exactly what they were talking about. but if you
 9 let me read the letter. I'll try

10 Q You signed this letter. right?

11 A Yes.

12 Q And again. I'm just going to ask you some
 13 specific questions You say that the hardware for
 14 Duane Reade was finally all ordered on October
 15 18th. right?

16 A That's what the document says

17 Q And the document was a document which you
 18 wrote. right?

19 A Right. Obviously. I was concerned it
 20 should have been ordered two months earlier. but
 21 whatever

22 Q But from your standpoint. it was a good
 23 thing that NAM had in fact ordered the hardware for
 24 Duane Reade. right?

1 working hard to help find qualified sales
 2 candidates. right?

3 A Not at this time

4 Q Okay And that was a good thing from your
 5 standpoint. right?

6 A No. Getting people in place was a better
 7 thing Having HR people looking is a positive
 8 thing. but not result-oriented

9 Q Just answer the questions yes or no. or
 10 we're going to be here longer than we have to be
 11 (Exhibit 92 marked for identification)

12 Q Let me show you what we've just marked as
 13 Exhibit 92 This is an e-mail from Mr. DeVoe dated
 14 November 12th. 1999 Now, in this e-mail.
 15 Mr. DeVoe summarizes the status of CCMi personnel.

16 right? Right?

17 A Yes

18 Q He discusses organization. new hires and
 19 terminations?

20 MR. PETERS: Objection

21 Q (BY MR. KATZ) Right?

22 A He discusses a lot of things. Yes.

23 Q Okay And he says at the bottom of the
 24 letter, we will not be able to facilitate any

1 A Only if it got used.

2 Q Okay

3 A That server came and sat for months No
 4 one fixed it No one put the software on it So
 5 hardware was no good without the software That's
 6 why I say below Dave Benson's group It never got
 7 done.

8 Q Let's move to my next question You note
 9 in your letter that Kevin Tripp had just started.
 10 right?

11 A Yes. I see that now.

12 Q From your standpoint. this was a good
 13 thing. right?

14 A Yes Kevin was a great guy

15 Q And you note that Stephanie Nix was working
 16 hard to help find qualified candidates. right?

17 A I know she was stating she was yes

18 Q Okay. well. you state it as an affirmative
 19 fact While Stephanie Nix is working hard to help
 20 find qualified candidates. she's just now
 21 contacting recruiters That's what you said.
 22 right?

23 A Right

24 Q So you didn't have any doubt that she was

1 additional head count increases at this time. Do
 2 you see that?

3 A Yeah

4 Q And then under Ann's group manufacturing
 5 sales. it says hold firm and look to hire
 6 additional head count as sales develop. Do you see
 7 that?

8 A No.

9 Q Look under manufacturing sales hyphen Kevin
 10 Tripp. It says hold firm and look to hire
 11 additional head count as sales develop Do you see
 12 that?

13 A Yes

14 Q And this was consistent with NAM's policy
 15 that head count follows sales. right?

16 A Wrong

17 MR. PETERS: Objection

18 Q (BY MR. KATZ) And under the stock purchase
 19 --

20 A But this is not accurate.

21 Q Just yes or no You answered the question.

22 A No. I --

23 Q You answered the question. We're going to
 24 be here all night unless you just answer the

1 question
 2 A You're confusing the record. counsellor
 3 Q Well your counsel will have an opportunity
 4 to set the record straight if he feels it
 5 necessary Now, under the Stock Purchase
 6 Agreement, News America Marketing senior management
 7 had the power to make head count decisions, right?
 8 MR. PETERS: Objection

9 A No
 10 (Exhibit 93 marked for identification)

11 Q (BY MR. KATZ) Let me show you a document
 12 we've marked as Exhibit 93. Exhibit 93 is two
 13 e-mails, one from you to Mr. DeVoe and others dated
 14 Monday, November 15th, 1999, and then another
 15 e-mail from Mr. DeVoe to you and others dated
 16 Monday, November 15th, 1999, later in the day
 17 Now, your e-mail of Monday, November 15th, 1999,
 18 responds to Mr. DeVoe's e-mail of November 12th
 19 1999, correct?

20 A Are you asking if this is a response to
 21 mine?

22 Q I'm saying that your e-mail that begins in
 23 the middle of the first page of the exhibit is a
 24 response to the previous exhibit. Mr. DeVoe's

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1 e-mail to you of November 12th, 1999.
 2 A Of this one?
 3 MR. PETERS: No. Does 92 -- does 93
 4 respond to 92?
 5 A 92, 93 --
 6 Q (BY MR. KATZ) And let me see if I can help
 7 you. Your e-mail begins Dear Dave and John.
 8 You're sending it to Jon Rubin as well as
 9 Mr. DeVoe. And you say in the first line, I have
 10 reviewed your e-mails of Friday and Saturday; do
 11 you see that?

12 A Yes, I see it.

13 Q And the e-mail of Friday that you're
 14 referring to is Mr. DeVoe's e-mail that was our
 15 previous exhibit, right?

16 A Right, but I don't see Saturday's. I
 17 assume that's the one.

18 MR. PETERS: Well, don't assume.

19 A I don't know.

20 MR. PETERS: Don't speculate.

21 Q (BY MR. KATZ) In any event, in the next
 22 sentence you say although we agree to the changes
 23 in general for present budgetary and operational
 24 issues, the timing and tactics you are suggesting

1 do not work for us. Did I read that correctly?
 2 A That's what it says.
 3 Q And the beginning of the sentence, just to
 4 emphasize the point, you say that you agree to the
 5 changes in general, right?

6 A Are you reading the letter --
 7 Q I'm just asking you a question.
 8 A -- or are you asking what I meant?

9 Q No, I'm just asking you to say that those
 10 are the words that you used.

11 A Those are the words. That's not what I
 12 meant. You're taking it out of context.

13 (Exhibit 94 marked for identification)

14 Q Let me show you Exhibit 94. 94 is a memo
 15 dated 11/17/99 titled summary and next steps. Do
 16 you see this document?

17 A Yes.

18 Q This document reflects that you
 19 participated in a strategy session presentation on
 20 -- in New York on November 17th, 1999?

21 A Yes.

22 Q Do you see that? And -- and if you go to
 23 the second page of the document, do you see where
 24 it says the issues raised by Paul and Dominick

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1 included, and then it lists a number of bullet
 2 points? Do you see that?
 3 A Yes.
 4 Q And Paul was Paul Carlucci?
 5 A Yes.
 6 Q Right? He was the chairman of the company?
 7 A Yes.
 8 Q And Dominick was Dominick Porco, right?
 9 A Yes.
 10 Q He was the president of the company, right?
 11 A Yes.
 12 Q And among the issues raised by the two of
 13 them was need to educate NAM's sales force on the
 14 product; do you see that?
 15 A Yes.
 16 Q And he's referring there to your product.
 17 right?
 18 A Yes.
 19 Q And next, it says need to have NAM's sales
 20 force assist in setting up calls at key retailers
 21 and manufacturers; do you see that?
 22 A Yeah.
 23 Q Both of these items were recognized by NAM
 24 senior management, right?

1 A They were part of the business deal

2 Q Right

3 A They just never did it.

4 Q Well that's your opinion But from your
5 perspective it was a good thing that Paul and
6 Dominick were raising these issues right?

7 A No At that time we were beginning to get
8 a feel or were trying to work within the new
9 organization We were very concerned that it
10 wasn't happening And we'd go to these meetings
11 and we'd try to participate and we tried to get
12 them back on track but it wasn't working

13 (Exhibit 95 marked for identification.)

14 Q Let me show you a document we've marked as
15 Exhibit 95 Exhibit 95 is a December 7th 1999
16 letter from Ms. Raider to Mr. DeVoe and then an
17 e-mail from Mr. DeVoe on the same date responding
18 to Ms. Raider's letter with a copy to you and to
19 Ian Moore. correct?

20 A That's what it purports to be.

21 Q Okay And in her letter of December 7th
22 1999 Ann asked to change the terms of the Stock
23 Purchase Agreement to extend the first year
24 earn-out period correct?

1 deal I understand your request NAM is not

2 amenable to changing the terms of the agreement
3 Do you see that?

4 A Yes

5 Q Do you remember receiving that e-mail from
6 Mr. DeVoe?

7 A There's a lot of substance in these
8 e-mails but the answer is he did not agree at that
9 time to extend

10 Q Right and he was pretty decisive in his
11 response was he not?

12 A No I think later on he offered to change
13 it There were lots of discussions You're
14 pulling this out of --

15 Q This response was a very decisive response.
16 was it not?

17 A He said we're not going to extend it in
18 that one Later he said he did

19 (Exhibit 96 marked for identification.)

20 Q Let me show you a document we've marked as
21 Exhibit Number 96 Exhibit 96 is a January 13th
22 2000 e-mail from Mr. DeVoe to Mr. Fireman and
23 Ms. Raider And in this e-mail in the second
24 paragraph Mr. DeVoe says the fact that News

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1 A Where? Where are you looking? At the
2 letter?

3 Q Yes.

4 A There's three documents in this document

5 MR. PETERS: Objection

6 A Hold on here Which one?

7 MR. PETERS: Take a look at it Unless
8 Mr. Katz wants to direct you to a particular place.
9 you'll have to read it

10 Q (BY MR. KATZ) Take a look at the next to
11 the last paragraph before the signature

12 A On what page?

13 Q Bates stamp NAM 03593

14 MR. PETERS: The paragraph begins in
15 closing. Your question is directed to that
16 paragraph. Mr. Katz?

17 MR. KATZ: Correct Mm-hmm

18 Q (BY MR. KATZ) Ann was asking Mr. DeVoe to
19 change the terms of the Stock Purchase Agreement to
20 extend the first year earn-out period correct?

21 A That's what it says

22 Q Okay And then let's go to the e-mail that
23 Mr. DeVoe sent back to Ann with a copy to you and
24 if you look at the last line of the e-mail it says

1 America is actively involved in the division
2 strategy and management and is not seen as simply a
3 means of obtaining financial resources is
4 important. The hands-on style of News America will
5 create additional opportunities for employees
6 within the division to be promoted into other areas
7 of News America. Do you see that?

8 A Yes.

9 Q Did you agree with this statement?

10 A No It wasn't true.

11 (Exhibit 97 marked for identification.)

12 Q Let me show you a document we've marked as
13 Exhibit 97

14 A He was justifying breaking up a winning
15 team

16 Q You've answered the question Exhibit 97
17 is an e-mail from Mr. Fireman to Jon Rubin at News
18 America Was this e-mail written in response to
19 Mr. DeVoe's January 13th e-mail to you?

20 A This was heartthrob This is telling him

21 --

22 MR. PETERS: No, his question is
23 whether 97 responds to 96.

24 A I have no idea I don't think so This is

1 more of the same. This is just a company policy
 2 thing. This -- I was asking -- I was begging Jon
 3 Rubin to please make something happen. We had a
 4 show. We had no technology. There were people --
 5 Rick Rossman, who was hired to help us, finally
 6 learned our business and was being taken off our
 7 account and was given to strangers who were not
 8 even hired. We had a time critical business that
 9 was falling apart and no one cared.

10 Q. Now, do you remember working with the NAM
 11 logistics group to make a presentation on an
 12 American Express project in 1999?

13 A. No.

14 Q. You don't remember that? Do you remember
 15 --

16 A. What kind of project? I mean --

17 Q. Well, I'm asking you.

18 A. We were working the Visa, MasterCard,
 19 American Express, Discover. I had relationships
 20 with everybody.

21 Q. And you worked with the NAM logistics group
 22 to --

23 A. I don't know what a NAM logistics group is.

24 Q. Did you work with other people to assist

1 Q. Okay, but as far as you -- as far as you
 2 know, in your own personal experience, the Toshiba
 3 business was the best piece of business that you
 4 received during the five years after the
 5 acquisition?

6 A. You me or you CCMi or SmartSource Direct or
 7 who?

8 Q. Well, we'll start with you, Mr. Fireman.
 9 It was the best piece of business that you were
 10 successful in bringing in?

11 A. No. The best piece of business was the
 12 Ahold prepaid cellular contract. That was a \$50
 13 million piece of business.

14 Q. But that contract was never signed?

15 A. Sure it was.

16 Q. Do you have a copy?

17 A. No.

18 Q. Where would you find a copy?

19 A. In the records of News America Marketing.

20 Q. And if I told you there was no such signed
 21 contract, would you agree with me that none
 22 existed?

23 A. No.

24 Q. But you don't have a copy yourself?

1 you on any of those projects?

2 A. You've got to define the product. What's a
 3 NAM logistics group?

4 Q. Well, let me ask you this question. You
 5 remember the Toshiba project?

6 A. Yes.

7 Q. When did that first start?

8 A. I don't recall.

9 Q. And that started because you got a lead
 10 from News Corporation, right?

11 A. Yes.

12 Q. And that project closed, right?

13 A. Yes. That project closed.

14 Q. And the Toshiba project was the most
 15 substantial piece of business CCMi had during the
 16 five years after NAM's acquisition of CCMi, right?
 17 Just yes or no.

18 A. I don't know, but there was a --

19 Q. Can you think of anything that was more
 20 substantial than that during your five years with
 21 News America Marketing?

22 A. Seeing our core business was not done, that
 23 looked pretty good. I don't know. I didn't have
 24 access to the records.

1 MR. PETERS: Asked and answered. The
 2 answer is no.

3 Q. (BY MR. KATZ) You don't have personal
 4 knowledge that the contract was signed?

5 A. Yes, I do.

6 Q. You weren't there at the time it was
 7 signed?

8 A. We rolled out a division of the -- so I
 9 assume we had a contract. I negotiated the
 10 contract. I think Jordan even helped, and it was
 11 signed by -- I believe it was signed and we rolled
 12 out the first division, so if it wasn't signed, we
 13 had a full implementation going on with a major
 14 retailer and we were waiting to roll out the whole
 15 other groups.

16 Q. The Toshiba project was a very good thing
 17 from your perspective, right?

18 A. The Toshiba project was a part of card
 19 marketing and we were the experts in the country.

20 Q. Please just answer the question.

21 A. Yes, of course it was a good thing.

22 Q. And you found it because of a lead from
 23 NAM's parent corporation, no?

24 A. We found it because it was either Citibank

1 in New York or Citibank in Tokyo were looking for
 2 someone to do a coupon delivery to solve a very
 3 major problem that Toshiba was having. And
 4 obviously, News America Marketing was coupon
 5 driven, but --

6 Q Please just answer the question You found
 7 it because of a lead that was provided you from
 8 News America Marketing's parent, correct?

9 A Don't know Could have been from News
 10 America Marketing.

11 Q Okay.

12 A Don't know

13 Q But you wouldn't have found it if you were
 14 just left to your own devices, right?

15 A I didn't find it It found me

16 Q Thank you That answers the question.

17 A It found us because we were the only ones
 18 in the country that could do it.

19 (Exhibit 98 marked for identification)

20 Q Let me show you a document which we've
 21 marked Exhibit 98. Exhibit 98 is an April 6th,
 22 2000 e-mail from Henri Lellouche to -- to Bill Adam
 23 and others, or the subject of it is Bill Adam and
 24 it's to a number of recipients And the e-mail

1 Q Why not?

2 A Because it wasn't true They signed a
 3 contract to do it but the people to do it -- Bill
 4 Adams wasn't the person to do this.

5 Q Why?

6 A Because he was a -- he wasn't an IT guy
 7 Bill Adams was a creative, consultative guy with
 8 knowledge of technology He would die and did die
 9 in that environment I mean, there wasn't the
 10 staff or the dedication or the focus to do this
 11 correctly I was disappointed that it cost multi
 12 millions of dollars. I could have bought it for
 13 less than 300,000. They spent millions, wiped out
 14 my ability to spend any other money under our
 15 earn-out, and they never delivered So this e-mail
 16 dated April 2000, I don't think they delivered the
 17 product in working fashion ever and they didn't
 18 show it to clients for at least a year or so later,
 19 and the marketplace moved without us.

20 (Exhibit 99 marked for identification)

21 Q Let me show you Exhibit 99, but before I
 22 get to that, let me ask you what you meant when you
 23 said the marketplace moved without us

24 A Other people were actually growing the

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1 begins -- well, let me ask first, you received a
 2 copy of this e-mail, right?

3 A I don't know.

4 Q I mean, it says to News America Marketing
 5 all You would have been included in that?

6 A Should have been, but I don't know what
 7 they did The answer is -- I knew about this.
 8 Yes.

9 Q Okay What was your e-mail address when
 10 you were at News America Marketing?

11 A R Fireman at News America dot com

12 Q Okay And the beginning of this e-mail
 13 says I am sure that you have all read about our
 14 multi-million dollar investment in the Epiphany
 15 software and the host at ASP This represents a
 16 major commitment by NAM through the SmartSource
 17 Direct division to be a major player in the
 18 customer relations marketing, CRM business and we
 19 expect it will generate significant revenue for
 20 SmartSource Direct Do you see that?

21 A Yes.

22 Q Did you agree with this statement in
 23 April 2000?

24 A No

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1 space. We -- when we started with them, probably
 2 in -- you could talk about the numbers, but we were
 3 -- everyone was just about to go to card programs
 4 We were 50-60 percent of the marketplace.

5 Q CCMI was?

6 A Yes. I mean, if we could just -- Catalina
 7 -- there was one other company in America that had
 8 the expertise to issue We invented the key tags
 9 We invented the process of how applications are
 10 done and how they're done off-shore. We invented
 11 the concept of stored value in the applications for
 12 Toshiba We had software that could analyze the
 13 program and do it And at that time, Catalina,
 14 Valassis were acquiring companies and getting into
 15 the business and they were investing in trade
 16 shows, they were investing in technology, they were
 17 actually doing stuff Instead of keeping our core
 18 unit together, we were broken up and destroyed We
 19 were destroyed So while we're building Aspen for
 20 a year and a half, you know, companies with --
 21 Market Expert was another software company

22 Q You said you had retailers that made up 50
 23 to 60 percent of the market share?

24 A At one time yeah

1 Q Please name them for me
 2 A Lucky Stores. I mean --
 3 Q Name all of them.
 4 A Shaw's, Lucky -- I mean, we were talking to
 5 every retailer in the country.

6 Q But who did you have under contract on an
 7 ongoing basis?

8 A I don't recall

9 Q Okay

10 A But of the card programs that were out
 11 there, we had to have 30 to 60 percent of all those
 12 customers and we had talked to the rest. It was
 13 all about to happen. All we had to do is get into
 14 a place and do it, and that's a fact.

15 Q Let's go back to Exhibit 99. Can you
 16 identify that for us?

17 A I can't read it. It's Ann's writing.

18 Q Have you seen it before?

19 A April 14th --

20 Q Well, can you read this?

21 A I can read parts of it.

22 Q Okay. Please read it into the record.

23 A I can't read all of it.

24 Q Well, read as much as you can, because I

1 slip -- financial deal of the earn-out. He could
 2 not believe no one has weekly meetings and us
 3 alone. Bob and I gave him concrete examples of how
 4 our issues -- Bob something denial manager --
 5 title -- Bob's title, general manager, with no
 6 authority, no responsibilities. Ann writes
 7 something with no control over who -- marketing
 8 person -- she's the marketing person with no
 9 control over who is hired for her staff on the --
 10 or the expenses. Plan is presented. I do not even
 11 have a copy. Bill Adam is pulled from the meeting
 12 at Pathmark at 10:30 the night before. The meeting
 13 is a failure. He -- he something -- already
 14 discussing -- he -- I can't read that. All ready
 15 to discuss. Had Kevin Tripp, my VP, was assigned
 16 to somebody else. We were put in a box. NAM was
 17 implementing the CCMII plan. The next step, Paul
 18 said he would voice our concern to the others and
 19 renew our financial something. Over the next few
 20 weeks we will see what happens.

21 Q Do you remember being present at this
 22 meeting that's recounted?

23 A Yes, I recall that meeting.

24 Q Is there anything that you remember that's

1 have trouble reading her handwriting.

2 A Okay. On Friday, April 14th -- I think it
 3 says '00, 2000, we, Bob and I, met with Paul
 4 Carlucci. The meeting was to say we were not liked
 5 or getting along with the management or -- of NAM
 6 and he was giving us advice. He provided the forum
 7 to present our concerns. His comments were
 8 interesting. Several times during the meeting he
 9 said oh, you should go see a lawyer.

10 Q Doesn't it say or you could go see a
 11 lawyer?

12 A Can you read her writing better than me?

13 Q It doesn't say should; it says could.
 14 doesn't it?

15 A I can't read it.

16 Q Okay

17 A He showed us a copy of e-mails with the --
 18 expressed extreme frustration on Henri -- actions
 19 Henri was taking. He said don't e-mail. No needs
 20 for a deposition. No something. Talk to the
 21 manager. He takes no notes during any meeting and
 22 he was disposed -- he would not have any record of
 23 our conversation. He purported to have no
 24 knowledge of our formal -- funeral -- there's a

1 not included in the memo that you just read?

2 A Well, I testified before. I mean --

3 Q You don't have to repeat. Just anything --
 4 anything new that's not in this memo.

5 A Anything that happened at the meeting
 6 that's not in the memo?

7 Q Correct.

8 A No. I think it's a generalization of the
 9 meeting.

10 Q Okay. And do you know why Ann prepared
 11 this memo?

12 A At that point in time, we were concerned
 13 that News was crushing our business and going to
 14 force us out and file some sort of lawsuit against
 15 us to crush us in the deal and throw us out of our
 16 own deal. That's why I testified previously we
 17 considered filing a lawsuit here, because we
 18 couldn't afford to fight them in New York. We
 19 thought that they were preemptively with
 20 premeditation wiping out our company, taking our
 21 database knowledge for their other businesses, and
 22 blowing us out of the marketplace that we so
 23 happily created, and we were scared.

24 (Exhibit 100 marked for identification.)

1 Q Let me show you Exhibit 100
 2 A Concerned Scared is probably --
 3 Q Did you receive a copy of this document.
 4 which is a memo from Ann Raider to Mr. Lellouche
 5 dated May 3rd. 2000?

6 A No
 7 Q And at the bottom of this, the document
 8 says -- Ms. Raider writes Henri, we will not
 9 achieve the planned sales goals for CCMi, now SSD.
 10 for NAM and certainly not the earn-out promised by
 11 NAM to Bob and I which is due in five short months;
 12 do you see that? Do you see that paragraph at the
 13 end of the letter?

14 A Yeah, I mean, we're -- we're a broken
 15 record. Please help. Please get us some staff
 16 Please improve the quality

17 Q Please. We're going to be here way over
 18 time unless you just answer the questions yes or
 19 no

20 A Yes

21 Q I've been saying that all day. And you
 22 would agree with me that there was no specific
 23 dollar amount earn-out promised in the 1999 Stock
 24 Purpose Agreement, correct?

1 marketing and building customer relationships will
 2 be the bridge for the bricks to clicks and will
 3 become a competitive advantage for SS dot com. We
 4 are pleased Chris and Henri are now including us in
 5 some of the strategic discussions with the I-Group
 6 executive management team. Did I read that
 7 correctly? Right?

8 A Yes.

9 Q And you wrote that?

10 A Well, it's a preamble to other content in
 11 this letter

12 Q Right. You were most concerned about
 13 getting NAM to agree to a modification of the Stock
 14 Purchase Agreement so you could, quote, earn your
 15 money; isn't that right?

16 A We were dedicated to anything that made
 17 positive sense, but yes, we were concerned that we
 18 had a chance to make the money we bargained for
 19 when we sold the business

20 (Exhibit 103 marked for identification)

21 Q Okay. Let me now show you Exhibit 103
 22 It's an e-mail by Mr. DeVoe to you and Ms. Raider
 23 dated September 12th, 2000. In it he says I
 24 received your letter dated September 11th, 2000

1 A No, incorrect
 2 Q There is no specific dollar amount
 3 explicitly stated as being promised in the 1999
 4 Stock Purchase Agreement, correct?

5 A No, incorrect

6 (Exhibit 101 marked for identification)

7 Q Let me show you Exhibit 101, and this is a
 8 very simple exhibit. Take a look at the second
 9 page. Actually, take look at the last page. This
 10 document reflects, does it not, that you received a
 11 \$3,000 merit increase in 2000? Right?

12 A Yes

13 Q And you also received a \$16,300 bonus in
 14 2000, right?

15 A That's what this purports. Less than the
 16 \$30,000 I thought I had

17 (Exhibit 102 marked for identification)

18 Q Let me show you a letter dated September
 19 11th, 2000 from you and Ms. Raider that we've
 20 marked Exhibit 102. And the first paragraph of the
 21 letter says we are encouraged NAM through your
 22 efforts made the commitment to the SmartSource
 23 I-Group and included products, services, concepts,
 24 and remains of CCMi as its core strategy. Loyalty

1 He said that it was his understanding that both you
 2 and Ms. Raider were playing an integral role in the
 3 development of SmartSource Direct; do you see that?

4 A I'm sorry. Where is that? What paragraph?
 5 MR. PETERS: Paragraph three, second
 6 sentence

7 A Additionally --

8 MR. PETERS: That Mr. Katz accurately
 9 quoted that sentence I think is his question.
 10 unless it's not your question

11 Q (BY MR. KATZ) He says second sentence,
 12 third paragraph, my understanding was that both of
 13 you play an integral role in the development of
 14 SmartSource Direct. Do you see that?

15 A Yeah. It's nice words.

16 Q And he did not agree to any modification to
 17 the purchase agreement, right?

18 A I didn't see that mentioned here.

19 Q At the beginning of the letter he says I
 20 received your letter dated September 11th, 2000. I
 21 respectfully disagree with many of the observations
 22 included in your letter as regards News America's
 23 performance against any commitments outlined in the
 24 Purchase Agreement. Do you see that?

1 A. Yes, but it doesn't talk about objecting to
 2 anything specific

3 Q. And he doesn't agree to any modification of
 4 the Purchase Agreement?

5 A. It doesn't say that. It says -- I mean,
 6 you want me to read these documents together?

7 Q. No, I'm just saying if you take a look at
 8 his September 12th, 2000 e-mail --

9 A. It doesn't talk about extensions to the
 10 Purchase Agreement. It talks about observations in
 11 the letter David DeVoe was almost gone.

12 (Exhibit 104 marked for identification)

13 Q. Exhibit 104 is an e-mail from Ms. Raider to
 14 you. Subject: Chris meeting. What was the purpose
 15 of this e-mail?

16 A. I don't know.

17 Q. Okay. There's a discussion of the deal?
 18 Do you see that in the middle of the page? Do you
 19 see that?

20 A. This is sort of broken up in the e-mail

21 Q. That's how it was produced.

22 A. What is the question, sir?

23 Q. The question is there's no reference to any
 24 particular paragraph section of the Stock Purchase

1 system. They insisted that the applications not be
 2 sent off-shore, so we -- someone in Connecticut
 3 sourced some companies to do it domestically. DEPS
 4 I believe was a referral from Giant and I don't
 5 think that they were getting the applications
 6 processed fast enough, so we had to put some
 7 pressure on them. And I think someone in the
 8 operations, Michael Cleary or Coughlin, came to me
 9 for help. That's my recollection.

10 Q. That's all you remember?

11 A. Yeah.

12 Q. Who in your view was responsible for the
 13 problem with the Giant project?

14 A. Michael Cleary and Henri took it to
 15 Connecticut. I mean, I don't know. We did a lot
 16 of Giant projects. I assume this was one of the
 17 roll-outs of the card program division at Giant.

18 Q. Don't you remember that at the time the
 19 roll-out occurred, there was a major problem with
 20 Giant?

21 A. No. We had an excellent relationship with
 22 Giant. I think it was that we weren't turning --
 23 there was a promotion they wanted to do with the
 24 roll-out and the key entry house wasn't getting it.

1 A. Agreement in this memo, correct?

2 Q. Well, these are the elements that are
 3 implicit --

4 Q. Just yes or no, please. Just yes or no.

5 A. No, this is a memo he --

6 Q. Just yes or no. There is no number
 7 referencing a particular section of the Stock
 8 Purchase Agreement --

9 A. No.

10 Q. -- in this memo?

11 A. No.

12 Q. Right?

13 A. No.

14 Q. You're agreeing with me?

15 A. Yeah.

16 (Exhibit 105 marked for identification)

17 Q. Exhibit 105 is an e-mail from you to
 18 Mr. Lelouche and others. It is dated October
 19 11th, 2000. Subject is Giant letter. What was the
 20 problem with the Giant project?

21 A. I can only -- I don't remember. I mean,
 22 DEPS, I believe, was a data entry house that Giant
 23 wanted us to use a domestic -- our normal process
 24 was to use off-shore, cheaper, faster, had a

1 turned around fast enough.

2 Q. Wasn't it your responsibility to have the
 3 cards processed correctly at the point in time that
 4 the Giant roll-out occurred?

5 A. No. I think it was already taken from me.
 6 But these were my friends at the manufacturer, so
 7 DEPS wasn't making the card. DEPS was a key entry
 8 place.

9 Q. Is it your testimony that you had no
 10 responsibility whatsoever for the problems that
 11 occurred in connection with the Giant roll-out?

12 A. You know, I used to say as general manager
 13 I'm responsible for everything in the company, but
 14 as the general manager of this company, everyone
 15 had been taken from me, no one reported to me, and
 16 they only asked me to help when there was a
 17 problem. I stepped into this, gave my best advice.
 18 If there was a problem at a card factory, I stepped
 19 in because I probably still knew the owners or
 20 people that respected me, and that's it. So if you
 21 tell me the specific problem with Giant and who did
 22 it, I would try to remember what my involvement
 23 was, but if you're saying that I was the head of
 24 operations, not true.

1 Q. Prior to Mike Cleary's arrival, weren't you
2 responsible for operations?

3 A. I was responsible for everything if I was
4 the true general manager.

5 Q. But putting aside your view --

6 A. No, I wasn't. I wasn't. From the
7 beginning, I was taken off of everything

8 Q. Didn't Mr. Coughlin report to you for a
9 significant period of time?

10 A. Before the acquisition?

11 Q. Before Mr. Cleary came on board.

12 A. When did Mr. Cleary come on board?

13 Q. Well, when do you think he came on board?

14 A. I don't remember. When did he come on
15 board?

16 Q. No, you have to answer the question to the
17 best of your ability.

18 A. Oh, I don't know.

19 Q. So in your view, you had no responsibility
20 whatsoever for anything that went wrong in
21 connection with the roll-out of the Giant program?

22 MR. PETERS: Objection to the form of
23 the question. I think he's answered it and I think
24 he's asked you to point to a particular program

1 Q. Well I'm asking if you blame it on you

2 A. No, I blame it on Mr. Tellouche and the way
3 he managed the business, and by October of 2000 he
4 had broken up and moved all the responsibility
5 elsewhere. But let me tell you, I work seven days
6 a week and I assist anybody with any problem that
7 came up.

8 (Exhibit 106 marked for identification)

9 Q. Let me show you Exhibit 106. Now, you
10 wrote the document we've marked as Exhibit 106,
11 which is a letter from you to Mr. Mixson dated
12 October 17th, 2000, correct?

13 A. Yes.

14 Q. Okay. And this letter was written at about
15 the same time that the Giant problem was occurring?

16 MR. PETERS: The Giant problem
17 reflected in Exhibit 105?

18 MR. KATZ: Yes.

19 A. I don't know. You've got to tell me more.
20 Refresh my recollection about the Giant problem.

21 Q. (BY MR. KATZ) The Giant problem was I
22 think as you stated that the cards weren't being
23 produced quickly enough.

24 MR. PETERS: No, I don't think he said

1 Q. (BY MR. KATZ) The particular program was
2 the roll-out and the particular problem was the
3 fact that the cards weren't being inputted quickly
4 enough, and then when the cards were inputted, they
5 were inputted incorrectly.

6 MR. PETERS: With that --

7 Q. (BY MR. KATZ) Do you remember that
8 occurring? There's been testimony from a couple of
9 deponents and you've been present at their
10 depositions.

11 A. You've given me an e-mail. You're talking
12 about the key --

13 Q. Put the e-mail aside.

14 A. No, I don't remember the problem with the
15 manufacture of those cards and I don't remember
16 when because there were orders and reorders and
17 reorders and reorders. I do remember there was a
18 fact that they wanted DEPS, if I'm correct -- and I
19 may be incorrect -- was a key entry place someplace
20 in the midwest. And they weren't doing it fast
21 enough. It had nothing to do with the card
22 manufacturer. I was not responsible. I didn't
23 visit them. I only assisted, and if you want to
24 blame it on me, blame it on me.

1 that.

2 A. I didn't say that at all. The applications
3 weren't being processed.

4 Q. The data entry wasn't quick enough.

5 A. But tell me when.

6 Q. I think it was in the fall of 2000.

7 A. I don't know.

8 Q. And the problem was at Giant they had all
9 kinds of promotions and give-aways for which they
10 needed the information so that their card members
11 could participate. Does that ring a bell? Are you
12 with me?

13 A. I'm with you. I'm looking at this memo.

14 Q. No, that's the Giant problem. Do you
15 remember that Giant problem?

16 A. I testified to my knowledge of that
17 problem.

18 MR. PETERS: Giant with a capital G?

19 MR. KATZ: Capital G.

20 A. I don't know when or how widespread I
21 don't have any recollection of the specifics of the
22 problem or who was responsible or who was involved.

23 Q. (BY MR. KATZ) Okay.

24 A. Obviously, I made a recommendation how to

1 fix it and I was making it to Henri. so if I was
 2 making it to Henri. he was obviously in charge and
 3 not me. Why would I be asking him?

4 Q. Okay. With respect to the October 17th.
 5 2000 letter that you wrote to Mr. Mixson. you wrote
 6 in the first paragraph we ask that you investigate
 7 what NAM is prepared to do so that we might protect
 8 our rights; do you see that?

9 A. Yes

10 Q. And you do not cite any provision of the
 11 Stock Purchase Agreement in your memo of
 12 October 17th. right?

13 A. Right. Well. not right. I mean -- it has
 14 -- relates to the bonus in 2 3 and it relates to
 15 the earn-out in 2 4 and it relates to the numbers
 16 that are in the gross margin section and it overall
 17 relates to the good faith of what we were trying to
 18 accomplish and wasn't being done against the
 19 competition that we made the deal to fight

20 Q. Okay. And you say any action by us to
 21 object was considered action against the company
 22 and we were isolated and even reported to the
 23 chairman for reprimanding; do you see that?

24 A. Yes

1 A. That was my goal. a hundred million. 50
 2 was easily attainable if we just held the market
 3 share and what happened. It's not like we had to
 4 go out and find the business; the business
 5 happened. It just happened to everyone else but
 6 us

7 (Exhibit 107 marked for identification)

8 Q. Let me show you what we've marked as
 9 Exhibit 107. This is an e-mail from Ann Raider to
 10 Mr. DeVoe with a copy to you dated November 17th.
 11 2000. There is a reference here to the
 12 \$2.5 million earn-out; do you see that?

13 A. Yes.

14 Q. What was that? Do you know? If you don't
 15 know. that's okay. Just tell me yes. no. or I
 16 don't know

17 A. I was just confirming conversations she had
 18 with David

19 Q. No. I'm just asking if you know what the
 20 \$2.5 million earn-out referred to

21 A. Well. it's one of the -- it's the bonus for
 22 one of those years

23 (Exhibit 108 marked for identification.)

24 Q. Let me show you the document we've marked

1 Q. And what did you refer to -- what were you
 2 referring to when you said that?

3 A. That was the meeting with Paul Carlucci
 4 when I fought to keep Bill Adam as part of our
 5 consulting and management team in Boston.

6 Q. Is that the same meeting that Ann Raider is
 7 memorializing in her memo of 4/16?

8 A. I believe. to the best of my memory at this
 9 time. yes

10 Q. Okay. And you say somewhere here that as a
 11 result of NAM's action. NAM and us are a year
 12 behind in the development of the required staff.
 13 technology and resources to grow this business into
 14 a \$100 million plus business. Do you see that on
 15 the next to the last paragraph of page two?

16 A. Yes

17 Q. Do you see that? Wasn't the deal to build
 18 the business into a \$50 million business?

19 A. That's how the earn-out was calculated.

20 Q. Okay

21 A. The industry grew -- the industry's north
 22 of 500 million. a billion

23 Q. Didn't you just embellish the \$50 million
 24 number to a \$100 million in this memo?

1 as Exhibit 108. and Exhibit 108 is a letter dated
 2 December 13th. 2000 from you and Ms. Raider to
 3 Mr. DeVoe. And in the letter. you and Ms. Raider
 4 wanted to be paid a \$2.5 million bonus amount.
 5 right? Bottom of the second page. you say we
 6 respectfully request that you make payment in full
 7 of the 2.5 million first year bonus amount. right?

8 A. Yes.

9 Q. How likely did you think it was that NAM
 10 would grant you the \$2.5 million bonus?

11 A. We were looking for some good faith. We
 12 were looking for someone to fix the wrongs that
 13 were happening for the breach of faith and the bad
 14 execution of what we hoped would have been a joint
 15 venture. We were hoping that it wasn't an
 16 intentional fraudulent situation.

17 Q. You're not answering my question. Now
 18 likely do you think it was?

19 A. I don't know. I don't know

20 Q. You -- you say in the letter we were to be
 21 paid 2.5 million with a gross margin of 3.1 million
 22 as -- inasmuch as CCMi had achieved this benchmark
 23 prior to the acquisition. If we had merely run
 24 CCMi as we had in the past with the promised

1 assistance from NAM. the 3.5 million was virtually
 2 guaranteed. Do you see that?

3 A Yes.

4 Q CCMi had never had a \$3 1 million profit
 5 margin in the past, correct?

6 A Where does it say that?

7 MR. PETERS: It says gross margin. 3 1
 8 million. Is that what you're referring to.

9 Mr. Katz?

10 Q (BY MR. KATZ) Yes, but my question was
 11 CCMi had never had a \$3 1 million profit margin in
 12 the past, right?

13 MR. PETERS: Objection to the form of
 14 the question.

15 A Wrong.

16 Q (BY MR. KATZ) It had?

17 A The gross margin was before expenses, so
 18 it's not the number you're thinking of

19 MR. PETERS: He's asking -- 3 1 appears
 20 in the document, but he wants to know whether you
 21 ever had a profit of 3 1 million. I think he's
 22 referring to that

23 A With a gross margin of 3 1 I believe, if
 24 you went back to the year we did the \$8 million and

1 A. But the calculation was different than that

2 --

3 MR. PETERS: He's just asking you what
 4 the document says

5 A. Yeah.

6 Q. (BY MR. KATZ) I'm just asking a question.
 7 Just asking a question. So it's a fair statement
 8 that that's not \$3 1 million, right?

9 A. I don't know. I think if you went to the
 10 document --

11 MR. PETERS: I'm going to object to the
 12 form of the question. Are you suggesting that
 13 Exhibit 108 says that they list a profit margin of
 14 3 1 million?

15 MR. KATZ: I'm saying the document --
 16 the language speaks for itself. It says that
 17 inasmuch as CCMi had achieved this benchmark and
 18 the benchmark is a gross margin of 3 1 million
 19 I'm just asking the question that based on 19-- I
 20 know they're different items, but in 1997 I think
 21 we've just established that the total revenue was
 22 7.9 million.

23 MR. PETERS: Gross margin is what?

24 MR. KATZ: I don't know what the gross

1 just deducted the cost of goods --

2 Q. (BY MR. KATZ) From the gross revenue?

3 A. Yeah

4 Q. You think would be over 3 1?

5 A. I assume.

6 Q. But you're not sure?

7 A. Well, when we made the deal, this was a
 8 lay-up, and that's what this letter meant.

9 Q. Let's see. Do you have Exhibit 16 in front
 10 of you?

11 MR. PETERS: 1-6?

12 MR. KATZ: Yes

13 Q. (BY MR. KATZ) Can you -- do you have a
 14 piece of paper? Well, we don't need a piece of
 15 paper. If we take a look at Exhibit 16 and we look
 16 at the actuals that are contained on page FR 2677,
 17 you have for 1997 total revenue of 7.9 million; do
 18 you see that?

19 A. Yeah

20 Q. Okay. And then we have your gross profit
 21 as identified as 2.618.507, so 2.618.507; do you
 22 see that?

23 A. Yes.

24 Q. Okay

1 margin was, but the gross profit was only 2.6
 2 million, and that's really just a deduction of
 3 total revenue minus cost of goods sold

4 MR. PETERS: All I'm saying, Gordon, is
 5 that 108 talks about gross margin, not gross
 6 profit.

7 MR. KATZ: Oh, I understand. I think
 8 gross profit is even a more expense laden number

9 A. No, it's less

10 Q. (BY MR. KATZ) We can discuss that at a
 11 later time

12 A. There's a schedule that David DeVoe
 13 prepared every year and he showed us how we could
 14 attain that number

15 Q. Do you have that document?

16 A. No, but it's in some of these documents
 17 But the letter was written

18 MR. KATZ: Off the record
 19 (Off the record)

20 Q. (BY MR. KATZ) In any event, we can agree
 21 that you had a loss in 1998? We've been through
 22 that before? It's in your financial statement?

23 A. Yes, we had a loss in '98

24 Q. And your annualized revenue for 1999, based

1 on your first quarter performance. was under 2.5
 2 million? Isn't that right?

3 A Oh. I don't know that

4 Q I think we went through that before earlier
 5 today. Don't you remember?

6 A Yeah. but you can find in the documents the
 7 actual closing balance sheet for '99.

8 (Exhibit 109 marked for identification)

9 Q Okay let me show you a document we've
 10 marked as Exhibit 109. You received Exhibit 109.
 11 which is a January 2, 2001 letter from Mike Racano
 12 responding to your December 13th letter to
 13 Mr. DeVoe. correct?

14 A Yes

15 Q And in the letter. Mr. Racano says there's
 16 no representation the Stock Purchase Agreement on
 17 which the seller can support the claim asserted in
 18 your second objection? Do you remember seeing
 19 that?

20 A Yes.

21 Q And did you disagree with this statement?

22 A Yes

23 Q On what basis did you disagree with this
 24 statement?

1 reference to a representation in the Stock Purchase
 2 Agreement on which the seller can support the claim
 3 asserted in your second objection of your December
 4 13th, 2000 letter to Mr. DeVoe. and I then asked.
 5 is your answer to that question going to be the
 6 first sentence of paragraph 6.87?

7 MR. PETERS: I object.

8 A That and the whole agreement.

9 Q (BY MR. KATZ) Okay
 10 A It's implicit in the agreement that we had
 11 a deal, as we said, to provide financial, sales,
 12 marketing, administrative. They didn't help us.

13 (Exhibit 110 marked for identification)

14 Q Let me show you a document we've marked as
 15 Exhibit 110. Exhibit 110 is an e-mail to
 16 Mr. Fireman and Ms. Raider from Mr. DeVoe dated
 17 Thursday, January 4th, 2001, and you'd agree with
 18 me that in his e-mail, Mr. DeVoe answers your
 19 request for a \$2.5 million bonus by saying no? Is
 20 that a fair statement?

21 A Well, I think he extends it for another six
 22 months if we waive year four.

23 Q Right. He then goes on to propose or he
 24 goes on to say that NAM would consider extending

1 MR. PETERS: Well, I'm going to lodge
 2 an objection that it's been asked and answered, but
 3 you can go through it again.

4 A You want one of my speeches?

5 Q (BY MR. KATZ) I don't want a speech. I
 6 want you to make reference to a representation in
 7 the Stock Purchase Agreement on which the seller
 8 can support the claim asserted in your second
 9 objection of your December 13th, 2000 letter to
 10 Dave DeVoe.

11 MR. PETERS: And I'm going to --

12 Q (BY MR. KATZ) Just point to a provision.
 13 That's all I'm asking you to do.

14 MR. PETERS: And I'm going to object to
 15 the question to the extent that it is a
 16 reiteration, albeit relying on a different
 17 document, but a reiteration of questions asked

18 Q (BY MR. KATZ) Let me see if I can just cut
 19 to the quick on this. Will you just point me to
 20 the first paragraph sentence of paragraph 6.87?

21 MR. PETERS: Well, objection.

22 A I've forgotten what the question was.
 23 There's been so much discussion.

24 Q (BY MR. KATZ) Okay. I want you to make

1 the period relating to the second bonus opportunity
 2 from a 12-month period beginning October 1, 2000 to
 3 18 months beginning October 1, 2000 in exchange for
 4 a reduction of the earn-out period from five years
 5 to four years. correct?

6 A Correct.

7 Q And you did not take him up on that --

8 A Right. At the time --

9 Q -- possibility. correct?

10 A -- we had no sales force. we had no
 11 software. We were forbidden to go to trade shows

12 (Exhibit 111 marked for identification)

13 Q Anyway, let me show you the next exhibit.
 14 It's Exhibit 111. And this is your response. It's
 15 dated January eighth, 2001. It came from
 16 Ms. Raider to Mr. DeVoe, and it's your response to
 17 the 18-month bonus proposal, right? Right?

18 A We reject your current offer to extend

19 Q So you rejected that proposal. correct?

20 A Yes

21 Q Okay

22 A It made no sense

23 (Exhibit 112 marked for identification)

24 Q Okay. And let me show you what we've

1 marked as Exhibit 113. It's a January 11th, 2001
 2 letter to Mike Racano from you and Ms. Raider
 3 titled News Stock Purchase Agreement. And he says
 4 in the letter we can remember discussions with
 5 David DeVoe, Junior, at the negotiation when he
 6 capped NAM's investment at 1.5 million

7 A Where are you?

8 Q Do you remember that?

9 MR. PETERS: This is page 5868, in the
 10 middle of the first paragraph. He's asking you
 11 whether or not he's read that correctly, that one
 12 sentence.

13 Q (BY MR. KATZ) Right?

14 A Yes

15 Q Okay. What do you remember -- well, do you
 16 have an independent memory of the discussion with
 17 Dave DeVoe, Junior at the negotiation when he
 18 capped NAM's investment at 1.5 million? And that's
 19 just a yes or no answer

20 A Do I have a present memory or --

21 Q Yes

22 A -- did I have a memory then?

23 Q Do you have a present memory? Memory then
 24 doesn't do us any good.

1 Q Right. And you as CCMI prior to the
 2 acquisition had never done business with Food Lion.
 3 correct?

4 A Food Lion hadn't agreed to a card program
 5 until after the acquisition.

6 Q Okay. So that was a client that came on
 7 only after your stock was sold to News America
 8 Marketing, right?

9 A The marketplace came on. That's why we
 10 made the deal.

11 Q Okay

12 A The marketplace -- all these supermarkets
 13 decided to do it. They just didn't do it with us.

14 Q And there were some major competitors out
 15 there trying to get the business, right?

16 A Not at the time.

17 Q Who were the competitors that you had in
 18 the 1999 to 2005 time frame?

19 A There was just one.

20 Q And who was that?

21 A It was a guy from New Jersey, Paul Coriiss.
 22 I don't know the name of the company. He
 23 eventually got bought by Catalina.

24 MR. PETERS: His question goes right

1 A Well, I think in one of the things you
 2 showed me --

3 Q Just yes or no. Do you have a present
 4 memory?

5 A I have a present memory that there was a
 6 1.5 million cap.

7 Q And do you remember why Mr. DeVoe wanted an
 8 investment cap?

9 A Because that was the cash that I requested
 10 and that's all he was going to commit to putting
 11 in, but he --

12 Q You've answered the question.

13 A But he wasn't going to spend it all on
 14 this.

15 (Exhibit 113 marked for identification.)

16 Q Let me show you Exhibit 113. Exhibit 113
 17 is an e-mail from you to Mr. Lellouche with copies
 18 to Jim Mumm and Bill Adam and others, and the topic
 19 is Food Lion sales team. Do you see that?

20 A Yeah

21 Q Food Lion was a new retail client for
 22 SmartSource Direct?

23 A Food Lion is a chain in the Southeast
 24 United States

1 through 2005.

2 A Well, once Market Techniques was competing
 3 with us on the software and they got acquired --
 4 well, we almost acquired them. After Henri had
 5 this Epiphany fiasco, Market Techniques, that had
 6 some application, was in Kroger and other
 7 supermarkets. Henri was tasked with a -- a
 8 committee to go and buy them because they were for
 9 sale. News America did an analysis of the
 10 marketplace and I think Henri shared me at one
 11 meeting, because I had a relationship with the
 12 principals, and I think they were asking for 16 or
 13 \$18 million for their software. And Henri did an
 14 analysis of the marketplace that hasn't been
 15 produced. It would be very relevant to some of
 16 your questions. So they got bought by Valassis and
 17 Catalina, so when I was active, it was
 18 Valassis/Catalina that had bought that company and
 19 then Valassis bought that company and they just
 20 kept growing.

21 Q But it's your testimony that News America
 22 Marketing did an investigation to determine whether
 23 it would be in its best interest to acquire Market
 24 Analysis, correct?

1 A Right, because our software -- we had not
 2 supported the legacy system, which cost us clients,
 3 and our Epiphany was a disaster because it was
 4 totally mismanaged and overspent

5 (Exhibit 114 marked for identification)

6 Q Okay let me show you a document that
 7 we've marked as Exhibit 114. This is an e-mail
 8 dated March 30th, 2001, from you to Mr. Leliouche
 9 regarding Harris Teeter. What was the purpose of
 10 this e-mail?

11 A As I told you, only when there was problems
 12 did they come to me. News America had a different
 13 business than SmartSource Direct. They had margin
 14 levels that they claim as minimum in their
 15 business, they applied them to ours, so when
 16 Connecticut got control of the production of cards,
 17 we were putting out bids that couldn't win. They
 18 wouldn't believe us that the cards were a loss
 19 leader against the other business, which is really
 20 the consulting and the software, so I was asking
 21 Henri to bend the rules to get us in the door at
 22 Harris Teeter to win this three-year contract.
 23 That's the purpose of the memo.

24 Q What ultimately took place?

1 box work history current assignment it says, among
 2 other things, Bob supervises all card and data
 3 entry functions through his direct report, Robert
 4 Coughlin; do you see that?

5 A Yes

6 Q That was a correct statement at the time,
 7 correct?

8 A Well, it was correct for the year.

9 Q That's what I'm saying

10 A Yeah, until Bob Coughlin was moved.

11 Q Now, it also says in the overall
 12 achievements box, worked diligently with Citibank
 13 on the Toshiba class action settlement which will
 14 result in an unexpected windfall of business for
 15 SSD in the area of card-based stored value

16 A Yes

17 Q And that statement was correct, right?

18 A Yes

19 Q And in the areas of improvement it says
 20 that much work is needed on moving from a
 21 stand-alone mentality to a collaborative mentality
 22 as part of the I-Group NAM organization. Bob needs
 23 to learn how to develop internal support for his
 24 views and learn to accept and embrace company

1 A I don't remember. I'm saying take a profit
 2 of nine percent, because any profit is good, and
 3 the ancillary business will make a difference. I
 4 don't know if he did it or he didn't.

5 (Exhibit 115 marked for identification)

6 Q Let's go to our next exhibit, which is
 7 Exhibit 115 and it is your evaluation for the year
 8 2000. And you've seen this document before, right?

9 A I don't know. I've seen my evaluation for
 10 2000, but this is really -- is this it?

11 Q You signed it, right?

12 A I signed receipt of it, yes.

13 Q And you're identified as a managerial
 14 employee; do you see that on page one?

15 A Yes

16 Q Okay. And --

17 A That changed. In subsequent years when
 18 there was no one reporting to me, I asked Henri why
 19 I had to do that.

20 Q Okay, let me just ask the questions. You
 21 don't need to answer questions that I don't ask.
 22 Okay? Are you with me?

23 A Yes

24 Q Okay. If you go to page NAM 815, in the

1 decisions that may or may not support his views on
 2 business, less broad sweeping rhetoric and more
 3 detailed focus on assigned tasks. Did you consider
 4 that statement to be correct?

5 A No.

6 Q In overall performance summary, it says Bob
 7 had a very difficult year as did the former CCWI
 8 overall. The on boarding of the company was
 9 complicated by a reluctance to embrace the NAM
 10 business philosophy and culture. At times, Bob is
 11 extremely insightful on many topics covering our
 12 businesses; however, his approach to addressing
 13 insights and concerns has left many in management
 14 very concerned. Bob would be a very big
 15 contributor if he's willing to take direction and
 16 work within the system to effect change and
 17 development of the business; do you see that?

18 A Yes

19 Q Did you agree with that?

20 A No. I was being chastised --

21 Q You've just answered the question. You
 22 don't need to say any more.

23 (Exhibit 116 marked for identification.)

24 Q Let me show you Exhibit 116. Exhibit 116

1 is a copy of SSD executive minutes dated April
 2 24th, 2001. And you were at the meeting for which
 3 these minutes were taken, correct?
 4 A. Does it say anything?
 5 Q. Take a look under attendees.
 6 A. Yeah, there I am.
 7 Q. How often did SSD executive committee
 8 meetings take place?
 9 A. Weekly.

10 Q. And you were always included in these, were
 11 you not?
 12 A. No.

13 Q. Why would you be excluded from them?
 14 A. Henri said there was no reason for me to
 15 come.
 16 Q. When did he say that?
 17 A. At some point in time.
 18 Q. Can you give me a year?
 19 A. Well, probably sometime after the -- I
 20 don't know.

21 (Exhibit 117 marked for identification)
 22 Q. Let me show you Exhibit 117. Exhibit 117
 23 is an e-mail dated May 24th, 2001 with some
 24 documents that are attached to it. The title of it

1 Fontaine send this.
 2 Q. So there's no mystery here; you and Henri
 3 pitched K-Mart, right?
 4 A. Henri came with me to the initial meeting
 5 at K-Mart. I was having all sorts of problems.
 6 Q. Okay. You've answered the question. And
 7 you say in your attached memo that I believe that
 8 we impressed the K-Mart team with our knowledge and
 9 experience to assist in all aspects of this new
 10 core marketing campaign for K-Mart?

11 A. Yes, we could do it.
 12 Q. Did you get any business from K-Mart?
 13 A. No.
 14 Q. Okay. Now, Diana Fontaine, again, you told
 15 us that she was your executive assistant for some
 16 period of time, correct?
 17 A. Yes.
 18 Q. Did you have any personality problems with
 19 Diana Fontaine?
 20 A. No.
 21 Q. Did she have any problems with you?
 22 A. No.
 23 Q. Are you sure about that?
 24 A. Oh, we had our differences and I know she

1 is K-Mart next steps. Fair statement that you and
 2 Henri pitched K-Mart, right?
 3 A. I don't know the question. Did we pitch --
 4 Q. Is it a fair statement that you and Henri
 5 pitched K-Mart?
 6 A. Well, hold on a second here. Is this from
 7 me? Okay.

8 Q. Diana Fontaine was your executive
 9 assistant, right?
 10 A. At the -- after the acquisition, and then I
 11 -- she was given to someone else and then she was
 12 terminated. She was too expensive. Ann testified
 13 she was getting over 40,000 and they --

14 Q. Just a yes. She was your executive
 15 assistant at the time this document was prepared.
 16 correct?

17 A. Yeah.

18 Q. And the e-mail which she sent is attached
 19 is a document Bob has created which outlines the
 20 next steps resulting from the recent meeting he
 21 Bob and Henri had with K-Mart, right?

22 A. No. Where does it say that?

23 Q. The first page.

24 A. Oh, the cover page. Yes, I had Diana

1 called Henri upset one day, but she and I were
 2 fine.

3 Q. Why did she call Henri?
 4 A. Because Henri was undermining everybody in
 5 the office and wanted to goody goody call me. So
 6 one day she probably didn't do something right and
 7 I reprimanded her and she called Henri.

8 Q. Do you remember any more details regarding
 9 this event?

10 A. No. I don't remember the time, but it was
 11 all about undermining us with our own people, which
 12 Henri did a very good job of.

13 (Exhibit 118 marked for identification)

14 Q. Let me show you a document we've marked as
 15 Exhibit 118. It's an e-mail from you to Michael
 16 Cleary and others regarding Giant data entry entry
 17 misspelled Brown name.

18 A. Okay. So here's DEPS.

19 Q. And in this e-mail, you say that you were
 20 incredulous that this happened so many times. Do
 21 you see that?

22 A. Absolutely.

23 Q. And what was it that happened so many
 24 times?

1 A. This has got to do with the data entry
 2 firm. This confirms that Michael Cleary was
 3 running the project. and when it ran into problems,
 4 they came back to me. So again we had been
 5 isolated. but someone had to make a decision on how
 6 to handle it and how to look before the client. So
 7 this was my message to everybody: let's take a
 8 positive thing and let's get it fixed

9 Q. When was DEPS engaged?

10 A. I don't know. That was the question we had
 11 before.

12 Q. Okay. If you don't know, that answers the
 13 question.

14 A. Obviously, it's sometime going on in 2001

15 (Exhibit 119 marked for identification)

16 Q. Okay. Let me show you the next exhibit.
 17 It's Exhibit 119. And it's an e-mail from you on
 18 Wednesday, June 27th, 2001 to Gary I. Franco at
 19 Citicorp RE: Contract extension. Would you agree
 20 with me, Mr. Fireman, that this e-mail pertains to
 21 the Toshiba project?

22 A. Yes.

23 Q. Okay. And in this e-mail, you say at the
 24 bottom, Gary, my company works within budgets; do

1 dated August 21, 2001 titled organizational change
 2 Do you remember receiving this e-mail?
 3 A. No.
 4 Q. Have you read this e-mail before?
 5 A. I don't remember.
 6 Q. Is there anything in this e-mail that you
 7 disagree with?

8 MR. PETERS: Off the record
 9 (off the record)

10 A. I mean, I didn't think it was right that
 11 Ann should lose her position to Henri
 12 MR. PETERS: He's asking you is there
 13 anything you disagree with that Ann says. It
 14 sounds like what you just said is you agree with
 15 what Ann says. Is Ann wrong in any way? Is that
 16 your question, Gordon?

17 MR. KATZ: I will adopt that question

18 A. I believe it's somewhat accurate.

19 Q. (BY MR. KATZ) Somewhat to me means not, so
 20 --

21 A. No, it's accurate. I mean, Henri -- Henri
 22 has his own style of doing things and sometimes he
 23 doesn't understand how people are perceiving him
 24 I don't believe he was -- Ann was a rainmaker at

1 you see that?

2 A. Yes.

3 Q. What did you understand regarding your
 4 company working within budgets? Or let me rephrase
 5 it. What did you mean when you said my company
 6 works within budgets?

7 A. I meant in the generic sense. I was saying
 8 that we had expense and he needed to renew -- I was
 9 trying to force a renewal of the contract because
 10 there was some stuff going on after the roll-out
 11 I was trying to get him -- he was trying to get
 12 Toshiba to reup for another few hundred thousand
 13 dollars if not more, so I was saying we're still
 14 doing stuff even though the contract is over; give
 15 us some more money, and he did.

16 Q. Okay, but what did you mean when you said
 17 my company works within budgets?

18 A. Meaning we allocate expense against income,
 19 so give us some income, and I got him to do it.
 20 which is, I don't know, another half a million
 21 dollars or something. The contract has expired and
 22 there's no budget, meaning we're still doing work

23 (Exhibit 120 marked for identification)

24 Q. This is an e-mail from Ms. Raider to you

1 these places and News America Marketing wasn't so
 2 well-liked at some of these retailers. They --
 3 they ran their other business hard and sometimes
 4 didn't give people fair counts and was in all sorts
 5 of issues trying to throw out other competitors and
 6 doing stuff that some people considered unethical.

7 Q. Who considered News America Marketing
 8 unethical to the best of your recollection?

9 A. A variety of supermarkets that told us that
 10 they were --

11 Q. Please tell me who you have in mind.

12 A. I don't remember the names.

13 Q. You don't remember any?

14 A. Well, I knew we weren't giving such a fair
 15 count to K-Mart when they were in the bankruptcy.
 16 I know that they were trying to force Floor
 17 Graphics out of Safeway and K-Mart. News America
 18 is being sued for tens if not hundreds of millions
 19 of dollars at the present time for stuff that they
 20 were doing in retail.

21 Q. But what retailers? That's who I want you
 22 to identify.

23 A. Kroger, Pathmark. I mean, I don't remember
 24 who or when, but it was a theme.

1 Q. Did these concerns exist prior to the
2 acquisition --

3 A. No

4 Q. -- of CCMi by News America Marketing?

5 A. No. We learned about it afterwards. We
6 were shocked. The atmosphere at News America
7 Marketing -- you were either inside with
8 Mr. Carlucci's group or you were outside. Most of
9 the people working there were not happy. Resumes
10 were on the street by most of -- a lot of people

11 Q. What due diligence did you do about the
12 culture of News America Marketing prior to the
13 acquisition of your stock?

14 A. Unfortunately, not enough. We trusted them
15 at their word. They romanced us hard. We had a
16 relationship with Henri. I thought he was terrific
17 at the time. And they -- I mean, I know they were
18 hard core and tough, but I thought that they would
19 use that toughness with us, not against us.

20 Q. So you knew prior to the acquisition that
21 News America Marketing was hard core and tough? Is
22 that --

23 A. No. I knew afterwards. In fact, Henri told
24 me

1 Whatever. So there was issues that we found out
2 that we really were sold that News was a company
3 that would exercise good faith and really would
4 support us and we really believed it was a
5 strategic fit with them. What I didn't understand
6 is Paul Carlucci's total -- it seemed he did this
7 as a favor for the Murdochs who were focused on dot
8 com and new technologies, but when Planet U went
9 out and the company in Athens went out and David
10 DeVoe lost enough to make him interested and was
11 going back to News Corp. -- we were toast. We
12 weren't going to get what we bargained for and it
13 seemed like the whole thing was a set up to get our
14 database for the dot com, for their core business.
15 They sold coupons in the Sunday paper. They sold
16 coupons in-store. The next avenue was to sell it
17 online and they didn't have the technology or the
18 know-how, and we brought that to them.

19 Q. What database did you bring to them?

20 A. The ability of -- the knowledge of how to
21 build a database and do targeted marketing,
22 retrieve data, analyze data. That's what we
23 brought: the ability to issue cards, which would
24 create a database of shoppers for the first time.

6/5/2007 Depo of Robert Fireman Vol. I

6/5/2007 Depo of Robert Fireman Vol. I

1 Q. You didn't know that before? Is that what
2 you were saying?

3 A. We weren't a threat to them. We were a
4 resource. I wasn't looking at them. All I needed
5 was that sales force and a little help and we could
6 have built that \$100 million business. We didn't
7 get it and the rest is incredible.

8 Q. So is it a fair statement that the sales
9 force was the single most important thing that you
10 wanted from News America?

11 A. That was one of them. News America had
12 just bought Planet U for \$23 million, which was
13 part of our group. They had just spent \$7 million
14 for the Softcard cards. And I looked at those two
15 deals and you know they were waste. They were
16 duped. I told David, I mean, David DeVoe, you just
17 wasted \$23 million for Planet U. They cannot
18 deliver what they say they have. And I turned out
19 to be right. All that money was lost. I told
20 Henri the deal in South Carolina or wherever it was
21 was no good because that card was economically
22 unviable.

23 Q. This is the Softcard?

24 A. Yeah, and that deal never happened.

1 both for retailers to know their own customers and
2 manufacturers to target. Heretofore, it never
3 exists.

4 Q. Although there were others in the same
5 business at the same time you were, correct?

6 A. The business was just evolving. No one had
7 the relationships in the country or the expertise
8 to deliver the products like we did. Why would a
9 company like Lucky Stores, a \$50 billion company --

10 Q. If that were the case, then why did you
11 have only a half million dollars in gross revenue
12 in the first quarter of 1999?

13 A. Because we were so -- we were so involved
14 in the sale that we lost -- we weren't a lot of
15 people. The acquisition of finding a strategic
16 partner was a digression that affected us. That's
17 why we pushed for a fast agreement to get right
18 into the marketplace, and that's why we freaked
19 when all of a sudden we're part of this company and
20 everything we thought was going to happen timely.
21 nothing's timely. Instead of helping us do the
22 job, HR people, instead of giving us the sales
23 force, they said the sales force doesn't have the
24 time and they cut out half the sales force. They

1 somehow decided to cut expenses and they merged the
 2 retail with the manufacturer. and the 200 people we
 3 thought were going to help us were now cut loose
 4 for some other reason. And they knew about it
 5 before the sale and they didn't tell us

6 Q How do you know that they knew about it
 7 before the sale?

8 A Because it happened just after

9 Q When did it happen?

10 A I don't know Just after the sale I
 11 can't tell you when

12 Q How do you know that they knew before --

13 A Because they told us, because of that, they
 14 can't do it. There was a hiring freeze. We were
 15 supposed to run as an independent unit. We were
 16 supposed to grow it. Feed it. We weren't -- we
 17 were making a technical consultative sale. not
 18 selling coupons and machines. We thought they
 19 understood that dynamically we were a different
 20 entity and we had different needs and
 21 responsibilities, that the people that worked for
 22 us had to have a broader understanding of what was
 23 happening. And it was happening. And Gordon, it
 24 happened It's a 500 million to billion dollar

1 A Well. I think in the employment agreement
 2 they had to keep an office in Boston for
 3 Ann

4 Q (BY MR. KATZ) But there's nothing in the
 5 Stock Purchase Agreement --

6 A It's implicit in the agreement that we were
 7 going to build this business in Boston and only use
 8 our parent for what we needed So I mean. this was
 9 -- this -- the memo. it's a good memo.

10 (Exhibit 122 marked for identification)

11 Q Exhibit 122 is an e-mail from Ann Raider to
 12 you. Mr. Fireman. dated October tenth. 2001 In
 13 it. Ms. Raider refers to a letter which Henri did
 14 not send to John K. at Ahold. Do you see that?

15 A Yes

16 Q Do you know why Ann sent this e-mail to
 17 you?

18 A She was devastated

19 Q About what?

20 A She had prepared something. she probably
 21 knew they were going to do it. and for some reason.
 22 Henri didn't send it

23 Q Do you know what she was referring to?

24 A She was just venting that she couldn't

1 business. The stored value card grew to 55
 2 billion It didn't exist in '99 We were there.
 3 The use of cards, of prepaid debit. I mean. it's
 4 huge. The window was lost.

5 Q Let me show you --

6 (Off the record.)

7 (Recess taken.)

8 (Exhibit 121 marked for identification)

9 Q (BY MR. KATZ) Exhibit 121 is an e-mail
 10 from Ann Raider to you. Mr. Fireman. dated August
 11 23rd. 2001. And in this e-mail. Ms. Raider says
 12 the corporation's plan is obvious Consolidate all
 13 work. New York City. Connecticut and eliminate the
 14 Boston office Do you see that in the next to last
 15 paragraph of the e-mail? Do you see it?

16 A Yes

17 Q Okay And you can't point to anything in
 18 the Stock Purchase Agreement which prevented News
 19 America Marketing from making such a consolidation.
 20 can you?

21 MR. PETERS: I think it's been asked
 22 and answered Objection

23 MR. KATZ: I don't think we've ever
 24 discussed consolidation

1 believe it.

2 Q But I'm asking you. do you know what
 3 specifically she was referring to?

4 A Monthly mailers. so there must have been a
 5 direct -- what you're calling a direct marketing
 6 program that they were doing Ann was very close
 7 with the people at Ahold That's how we won the
 8 last -- the big contract you said we didn't have.
 9 but this was part of direct marketing I assume
 10 monthly mailers is that they wanted to do something
 11 to their database. so if their database was ten
 12 million customers. there would be ten million
 13 pieces of mail sent monthly. so if you belong to
 14 the Ahold card club. you got a mailer with
 15 something in it. so there would be a document there
 16 and they probably would solicit manufacturers to
 17 come in and participate

18 Q But you don't have any direct personal
 19 knowledge with respect to the matter which
 20 Ms. Raider is discussing in Exhibit 122. correct?

21 A Well. I know what monthly mailers are I'm
 22 testifying to that

23 Q Okay. But nothing else?

24 A Right. She's saying --

1 Q Beyond that you don't know?
 2 A No, do not know
 3 (Exhibit 123 marked for identification.)
 4 Q Exhibit 123, let me hand it to you, is an
 5 e-mail from Ms. Raider to you regarding company
 6 demise dated October 17th, 2001? And in the second
 7 paragraph she says we invested over \$2 million to
 8 build software and cannot tell, show the industry;
 9 do you see that?

10 A Yes

11 Q You don't disagree with that statement.
 12 right?

13 A I don't know what she meant, so maybe the
 14 general -- I don't know what she meant

15 Q You don't have any reason to believe she's
 16 incorrect in that statement?

17 A Oh, I think it's a generalization she's
 18 making. She doesn't know what they spent

19 Q You think it was less than \$2 million?

20 A Well, she's voicing two frustrations in
 21 this letter; one frustration: we can't go to trade
 22 show, which was our core relationship builder; and
 23 two, that the Epiphany deal went over the million
 24 and a half dollars, which blew our investment in

1 Q All right
 2 A Though it is a legal -- not a living
 3 person; it's a legal person
 4 Q Would you agree that Ms. Raider had a
 5 tendency to speak in hyperbole?
 6 MR. PETERS: Objection
 7 A No, Gordon, the woman works a hundred
 8 hours a week. Her soul is in this thing. They
 9 clipped her wings and broke her knees
 10 Q (BY MR. KAIZ) There was no demise of CCMI.
 11 was there?

12 A Yes

13 Q You received earn-outs every year, right?

14 A In '01, the industry was probably 200
 15 million --

16 Q Just yes or no: you received earn-outs
 17 every year, right?

18 A Not from CC-- well, yes, I received
 19 earn-outs

20 Q And you received earn-outs after CCMI was
 21 rebranded as SSD, right?

22 A There was -- it didn't go to zero

23 Q And in fact, NAM helped you grow the
 24 business prior to October 17th, 2001 in some

1 other opportunities, and we had no say in it
 2 (Exhibit 124 marked for identification.)
 3 Q Let me show you a document from Ann Raider
 4 to Mr. Tellouche. You received a copy. It's
 5 marked as Exhibit 124. Actually, let me go back to
 6 Exhibit 42 before we go to Exhibit 43. In Exhibit
 7 -- if you could go back to Exhibit -- I'm sorry;
 8 not 42, but 123, do you have Exhibit 123?

9 A Yes

10 Q That's the e-mail that's titled company
 11 demise; do you see that?

12 A Yes.

13 Q Okay. It says -- the e-mail does --
 14 instead of helping us grow the business, the
 15 management of the company in a very calculated way
 16 is causing our demise. Do you see that?

17 A Yes

18 Q This statement is an exaggeration, is it
 19 not?

20 A No

21 Q Her statement is overly dramatic, is it
 22 not?

23 A Well, the death of the company is a
 24 metaphor

1 respects; isn't that correct?

2 A No

3 Q In no respects did NAM help you grow the
 4 business, right?

5 A NAM crushed this business

6 Q Okay

7 A They destroyed its personnel. They
 8 demoralized people. They insulted us, demised us,
 9 and the magic that we had slowly evaporated. They
 10 didn't give us the sales force. They didn't give
 11 us the technology. They broke up a group that was
 12 success, and it -- it feels intentional. You know,
 13 it happened so fast after the sale that it doesn't
 14 even feel like bad business. It feels like it's
 15 intentional, it was bad faith, and in a way fraud

16 Q But you'd agree with me that NAM got the
 17 lead for you for the Toshiba business, right?

18 A NAM didn't. Those people were seeking for
 19 somebody, somebody had heard about us and it got
 20 through to me.

21 Q Through NAM?

22 A Through Citibank

23 Q From Citibank to NAM to you?

24 A Who is the electronic coupon man? That was

1 me alone

2 Q But it came through NAM. right?

3 A Yes. the Toshiba deal came through NAM

4 Q Okay. NAM assisted you in landing new
5 retailers such as Giant. right?

6 A No. we had Giant

7 Q You had Giant prior to the acquisition?

8 A We had relationships with Giant. with
9 Kroger. with everybody that we had been developing
10 for four or five years. They knew we were the card
11 guys. and we had talked to them about the aspects
12 of loyalty marketing. card marketing. stored value.
13 and when they decided to make that move. we were in
14 that and running

15 Q So you didn't need anybody from NAM to help
16 you with the retailers because they already knew
17 about you?

18 A Right

19 Q And all they had to do was make a phone
20 call and they could sign you up. right?

21 A I needed NAM to help me with the
22 manufacturers sales force. I needed them to take
23 the 240 people and fill the funnel with promotions
24 Not one at a time I needed someone to help me

1 marketing group led by Kevin Tripp. right?

2 A No.

3 Q Kevin Tripp didn't lead a manufacturing
4 marketing group?

5 A Kevin Tripp got a few guys from time to
6 time to call on some people. Henri helped out
7 himself. They went around. It wasn't the plan
8 Q It wasn't what you wanted?

9 A It wasn't what they agreed to do. There
10 was supposed to be no head count on the
11 manufacturers sales force. That was agreed even by
12 David DeVoe.

13 Q Where in the agreement does it say that
14 expressly?

15 A In the gross margin number. no head count
16 And he agreed to it. Head count. because we were
17 going to get the free use of 200 people already
18 calling every day

19 Q Where does it say that in the Stock
20 Purchase Agreement?

21 A That was the deal that was implicit in the
22 agreement. It was not laid out. The business plan
23 was agreed to. The numbers were done by David
24 DeVoe and Julie. We talked about how we would run

1 either expand my software. scale it up a little bit
2 or help me with some support. and I needed a
3 strategic partner to help us grow

4 Q You didn't need their help with the
5 retailers? Fair statement?

6 A We were -- yeah. I didn't need their help
7 with the retailers. Well. I needed their help with
8 everything. It wasn't as though I didn't want
9 their help

10 Q No. but you didn't need their help with
11 retailers. right?

12 A We had a pretty good thing with retailers.
13 We had been to every city on the planet. met with
14 every person. I mean. we met with CFO's and IT
15 people and we talked at trade shows and Ann was
16 giving speeches. This was so big that the Food
17 Market Institute separate -- it couldn't fit in
18 their McCormick's Place. They had to have a
19 special show called Market Techniques to say about
20 the explosion of the technology into retail and the
21 opportunity that was there. This was exploding and
22 all we had to do was hold our own and we could have
23 done 50 to a hundred million dollars.

24 Q And NAM put together a manufacturing

1 the business. and when we made the deal. it all
2 changed.

3 Q Okay. And you would agree with me that
4 News America Marketing hired new retail salespeople
5 in Chicago and New York. Los Angeles. isn't that
6 right?

7 A There were people hired over the course of
8 five years to try to do something. but at that
9 point in time. the vision of the business was
10 mundane. I mean. how can you -- Kevin Tripp was
11 hired to organize the materials that could be
12 provided to 200 people. Packaged goods companies
13 were all over the country

14 Q I think you have Exhibit 124 in front of
15 you. This is a Raider to Henri Lellouche e-mail
16 dated 11/15/2001 that refers to the Duane Reade
17 contract status and the fact that Duane Reade was
18 not going to go forward with Aspen. Do you
19 remember that?

20 A Sure

21 Q And it's a fair statement that you and
22 Ms. Raider felt betrayed by Duane Reade's failure
23 to go forward with Aspen?

24 MR. PETERS: Betrayed by whom?

1 Q (BY MR. KATZ) By Duane Reade
 2 A No. It was embarrassing. the performance
 3 that News America was doing at Duane Reade. I
 4 mean, here was a guy that thought we were smart.
 5 bought into our vision, gave us the business, and
 6 the execution from the Wilton office of the data
 7 and their program and the ability to get Aspen up
 8 and going, they just blew us off nicely

9 Q Duane Reade did?

10 A They said look it. He was going to modify
 11 our proposed contact to include Aspen, but we
 12 couldn't show it to him. Every month it would be
 13 next month, next month, and then Bill Adam couldn't
 14 go. Ann was -- she was heartsick about this. We
 15 rolled out the Duane Reade card program. They
 16 loved us. We had a wonderful relationship. Gary
 17 Scharbino, who was the head of merchandising or
 18 whatever, he loved us. When we went to do the
 19 rest, nothing was ready, nothing was presented.
 20 She couldn't get any support. We couldn't demo the
 21 software. We promised month after month after
 22 month. And I was totally out of the loop. I had
 23 been completely not allowed. I'm not even in
 24 there. It was tragic.

1 through Bob's efforts, the company now sells e-gift
 2 and stored value products and services and is
 3 looking further to expand the utility of this
 4 platform for other CPG marketing programs; do you
 5 see that?

6 A Where are you?

7 Q Under overall achievements, item two.

8 A Yes.

9 Q Do you see that?

10 A Absolutely.

11 Q And you'd agree with that statement?

12 A Yeah. I did it all alone.

13 Q And Bob's relationship -- it goes on to say
 14 in item number four, Bob's relationships with card
 15 manufacturers and letter shops has enabled SSD to
 16 remain competitive in the marketplace and shorten
 17 deadlines, which helped SSD win business on short
 18 notice; do you see that?

19 A Yes.

20 Q And you'd agree with that statement?

21 A It's a long time ago. I mean, I had the
 22 relationships at the factories because I helped
 23 develop the --

24 Q Just yes or no

1 Q How did Duane Reade ultimately decide to
 2 handle its management of customer data information?

3 A I don't remember, but I know that we -- it
 4 was ours to lose. I don't know if they started
 5 with our original system, our marketing analysis
 6 system. I don't remember.

7 Q But you don't ascribe any responsibility
 8 for the loss of the -- or I should put it
 9 differently, the failure to obtain Duane Reade's
 10 going forward with Aspen on yourself or on
 11 Ms. Raider?

12 A Absolutely not.

13 Q Okay.

14 A I mean, it says --

15 Q You've answered the question. We'll be
 16 here all day.

17 A I mean, listen --

18 (Exhibit 125 marked for identification.)

19 Q Let me give you what we marked as
 20 Exhibit 125 and 125 is your performance appraisal
 21 for the fiscal year 2001. This document was
 22 completed sometime in 2001, correct?

23 A Yes.

24 Q Okay. And it says in overall achievements.

1 A They ran into a problem. I tried to get
 2 them a better deal.

3 Q What business do you recall as being won on
 4 short notice?

5 A I don't remember which one.

6 Q Okay.

7 A But I could get factories to do things
 8 faster for --

9 Q Okay. Let's go to areas for improvement.
 10 and there are three items listed. Do you see
 11 those?

12 A Yes.

13 Q Do you agree with any one of them?

14 A I mean, they were just general areas.

15 Q Did you disagree with these areas for
 16 improvement? Yes or no?

17 A Well, I wasn't happy with --

18 Q Yes or no, please.

19 A No. I disagreed. Yes, I disagreed.

20 Q Let's turn to the block that says special
 21 job objective, and that's -- it's -- it actually is
 22 abbreviated to SJO and it's under fiscal year 2002
 23 accountabilities and special job objective. Do you
 24 see that? It's on page 809.

1 A Yeah
 2 Q Do you see that?
 3 A Yeah
 4 Q It says secure a significant new client
 5 using the expanded card marketing utility coupled
 6 with SSD stored value back end partner. Do you see
 7 that?

8 A What number? Oh. SJ--

9 Q Did I read that correctly?

10 A Yes

11 Q In other words what's being stated here is
 12 that you were being asked to come up with another
 13 Toshiba, correct?

14 A Well, no

15 Q How did you interpret the special job
 16 objective part of your appraisal?

17 A Stored value could be a variety of
 18 different things. The Toshiba product was the
 19 ability to figure out how to trick the financial
 20 networks -- cards -- cards -- stored value is
 21 basically containing a value like a prepaid phone
 22 card. okay? So you could do it within one
 23 retailer. What I figured out on the Toshiba deal
 24 was how to do it in different retailers that had

1 A I think I got the Long Strugg business all
 2 by myself
 3 Q Did you do anything else?
 4 A I did a ton of stuff I mean I was
 5 developing card programs, new relationships

6 Q With who?

7 A With anyone I could

8 Q Identify who, please

9 A Well, I set up the whole prepaid
 10 activation. I realized that prepaid telephone was
 11 coming into this country. Where in this country,
 12 most everyone has cell phones on contract. in
 13 Europe, 85 percent is prepaid, no contract. So I
 14 realized if we were doing point of sale activation
 15 for gift cards, we could do point of sale for
 16 phones, and we were now bidding against companies
 17 like the Ahold contract we didn't bid and the gift
 18 card business and I was looking for new
 19 applications with prepaid games and prepaid cards
 20 and prepaid books and trying to link Internet sales
 21 to bricks. The dot com bust had happened. It was
 22 all about databases in the supermarkets and how
 23 could we drive more business to those people, so I
 24 was all over prepaid and stored value and point of

1 different systems that weren't connected, so we --
 2 I figured out how to do a non-financial transaction
 3 over the financial network, which allowed me to do
 4 that at Best Buy, CompUSA, Circuit City and
 5 nowhere else. The other use of stored value is
 6 coming into gift cards. And we had a chance to
 7 really pioneer gift cards in the supermarket world
 8 and a company had asked us to do that back in 1999
 9 and Jon Rubin wouldn't let me do it, and then
 10 everybody in the supermarket was doing gift cards.
 11 It could have been a gift card program. I think I
 12 was going after the Long Strugg business. They're
 13 400 stores out in California. I mean, there was
 14 talk in the company about going after another class
 15 action suit and using this as a vehicle, and I
 16 researched the law firms involved and talked to
 17 people, but I -- I had no marketing support. I
 18 couldn't get a rate card. I couldn't get anything
 19 printed. I was isolated, so that's why I agree
 20 with one. Just do it yourself; you're not going to
 21 get any help from this company. So the answer is
 22 yeah. I went out and I did it. I think I achieved
 23 that SJO.

24 Q How did you achieve it?

1 sale activation, and where I thought we could -- I
 2 could possibly say hey, I'm News Corp., and bring
 3 some people together, but I had to develop all my
 4 outside vendors. I had to do all the work myself.
 5 We mentioned Afectivo the last time. I built that
 6 all on my own creativity. I'd fly to California
 7 I tried to get game companies. We worked very
 8 hard.

9 Q And you were working on a lot of different
 10 projects simultaneously?

11 A All around card marketing. We were the
 12 card marketing guys. The core business had been
 13 destroyed, so I was trying to say okay, who knew
 14 more about electronic funds transfer and point of
 15 sale than I did; who had the relationships with
 16 Visa and MasterCard and Citibank.

17 Q Fair statement that you believe nobody
 18 knows more about those subjects than you?

19 A I just know enough to get something done.

20 Q Besides Longs and Toshiba, tell me what
 21 else you got done.

22 A Oh, I don't remember. We got programs
 23 done. The Ahold contract came that year or the
 24 year after.

1 Q. Did that result in actual revenue?
 2 A. Sure. We rolled out Bi-Lo stores, which
 3 was a division of Ahold.

4 Q. What was the name of the stores?
 5 A. B-I dash L-O-W.
 6 Q. And where are they located?
 7 A. Carolinas
 8 Q. And you were doing stored value cards for
 9 them?

10 A. No. We were doing prepaid phone
 11 activations in partners with -- I don't know.
 12 probably with lots of companies, but I was there
 13 competing with people who were in the business,
 14 winning the business because I could get it done

15 Q. Your testimony is that you won the
 16 business?

17 A. Oh, we won the business. We had an RFP
 18 with everybody in the country

19 Q. Besides Bi-Lo, besides Longs, besides
 20 Toshiba, what other business did you get?

21 MR. PETERS: He said Ahold.

22 MR. KATZ: Yes, the Bi-Lo division of
 23 Ahold

24 Q. (BY MR. KATZ) What else were you

1 A. That's correct
 2 (Exhibit 126 marked for identification)

3 Q. Let me show you a document we've marked as
 4 Exhibit 127. This is an e-mail from Ms. Raider to
 5 you, subject: Dominick. Do you remember seeing
 6 this e-mail before?

7 A. No
 8 Q. And there's a word after Dominick.
 9 Dominick's name; do you see that?

10 A. Dominick --

11 Q. C-H-I-A-C-A-O?

12 MR. PETERS: Chicago?

13 A. Chicago.

14 Q. (BY MR. KATZ) Is that supposed to be
 15 Chicago?

16 A. Yeah

17 Q. What is the connection between Dominick and
 18 Chicago?

19 A. Dominick Porco was the president of NAM
 20 He must have gone to Chicago and called everybody
 21 together as a town meeting for the office, and in
 22 the meeting, he told everyone that they wrote off
 23 50 million in the I-Group, so that is just what Ann
 24 is advising me. Someone in Chicago must have told

1 successful in actually bringing to conclusion?
 2 A. A lot of things were in development when
 3 the thing blew up, so I don't remember, but we were
 4 talking to Longs about prepaid and then I got taken
 5 out of the prepaid business. Henri went behind our
 6 back against all the vendors that had given years
 7 of time and money and told Ahold that we were no
 8 longer in the business after we won the contract
 9 and he gave it to Safeway.

10 (Exhibit 126 marked for identification)

11 Q. Let me show you a document that we've
 12 marked as Exhibit 126. And Exhibit 126 is an
 13 e-mail from Mike Racano to you, Mr. Fireman, titled
 14 earn-out review dated February fourth, 2002. And
 15 actually, below it is another e-mail, which I'm
 16 more interested in, and that is an e-mail from you
 17 to Mike Racano, again also dated February fourth,
 18 2002, again with the subject earn-out review

19 A. What's the question?

20 Q. My question is this. In your e-mail to
 21 Mr. Racano, you make the statement in the fourth to
 22 last line I do not know what you plan to show Ann
 23 at a meeting. She, Ann, has no accounting
 24 background. Did I read that correctly?

1 her and the thing looked like a big loss and we
 2 were associated with the I-Group. And they shut
 3 the I-Group down and then brought it back in-house.
 4 They went out and they hired offices in Lexington
 5 Avenue and did all this stuff for this I-Group and
 6 the dot com

7 Q. And it didn't work out, correct?

8 A. Destination website for coupon does not
 9 work. It still hasn't worked

10 Q. That's your view?

11 A. Yes.

12 Q. Okay.

13 A. Unless you tie it to the card. If you tied
 14 it to the loyalty card, it would have worked.

15 Q. Okay.

16 A. That's what people use every day

17 (Exhibit 128 marked for identification)

18 Q. Let me show you Exhibit 128, and this is an
 19 e-mail chain with the top e-mail being from you,
 20 Mr. Fireman, to Mr. Lellouche dated March 29th,
 21 2002. And can you tell us what this e-mail chain
 22 is all about?

23 A. Where does it start? Are these pages

24 connected?

1 Q. I believe so. I think it begins on March
 2 28th, 2002 and ends on March 29th, 2002.
 3 A. Okay. Well, I was involved in the
 4 development of a money transfer card to aid the --
 5 the big Hispanic population that was using Western
 6 Union to transfer money back to Mexico or Guatemala
 7 or Santa Domingo, and at the time, it was costing
 8 about \$50 for them to send \$300 worth of pesos to
 9 Guadalajara, and these people would go to the check
 10 cashing places and pay to cash their employment
 11 checks up to ten percent, and then the guy would
 12 put his Western Union hat on and say you want to
 13 send money back to mama, and they would charge them
 14 \$50. I said why can't we -- these people go to
 15 Wal-Mart and they go to K-Mart and they go to the
 16 supermarket. They trust their grocers. They just
 17 won't go to the banks because they're afraid the
 18 banks are going to arrest them and put them into
 19 jail. So if we could create two stored value
 20 cards, provide a debit network, and they would buy
 21 two together, send one to their mother in
 22 Guadalajara. They could load their money in Stop &
 23 Shop and the mother could pick up the money from an
 24 ATM machine, because the network of ATM machines

1 Q. Who ultimately did it, if anybody?
 2 A. Well, a lot of companies got into it, in
 3 pockets, but there's a company out in California I
 4 met with that has set up a network that's called
 5 the Green Dot Network, but In-Com, some of my
 6 partners in this deal like In-Com that was in the
 7 prepaid market originally with Safeway and other --
 8 In-Com did a billion eight hundred million dollars
 9 last year, and when I knew them in '99, they were
 10 doing 10, \$15 million and they've exploded into the
 11 gift card, money transfer, prepaid cards. What we
 12 were doing here was the beginning of like the Visa
 13 debit cards. We were ahead of that, which now are
 14 commonplace, but back then was avant garde. It was
 15 first generation. It was looking for customer and
 16 consumer acceptance and we were filling a need in
 17 the marketplace, so Henri must have thought I was
 18 doing good.

19 Q. And he says that you're going to be the Don
 20 Quixote of the unbanked?

21 A. Yes, could have been.

22 Q. To which you said I deserve it?

23 A. I put a lot of work into this. I dragged
 24 --

1 has grown to 20,000 in Mexico
 2 So we put this program together with
 3 some people I met and some partners again, in the
 4 stored value world, and we tried to market it and
 5 we -- Henri loved it that I took him to the White
 6 House and we had some fun. The issue is we had a
 7 lot of support from the Republican Party that was
 8 very interested in the Hispanic vote. And part of
 9 our team was a bunch of very powerful and public
 10 Hispanic people, and we put a figurehead of the
 11 former -- a Democrat, but the former head of the
 12 U.S. -- CFO of the U.S. Treasury, a guy named
 13 George Munios.
 14 So we had a winning product. The
 15 problem was now we had to show it to retailers.
 16 And as I went around to retailers, we found out
 17 that Western Union had some exclusive on money
 18 transfer, and even though we were on the shelf and
 19 not a money transfer depo, they were giving us some
 20 trouble, so that's what this is about, the issue of
 21 Western Union having -- and there were ways around
 22 it and we just didn't keep our wind. And it
 23 happened after we stopped doing this. I mean, it
 24 became a very big business.

1 Q. Yeah. What percentage of your time did you
 2 put into it?

3 A. When? I mean, I don't -- I don't even
 4 remember a time.

5 Q. 2002, that's the date of this memorandum.
 6 A. Yeah, I was deep into this. I would say at
 7 least 40, 50 percent of my time, but it was all
 8 about the same thing. Whether I was doing a
 9 prepaid card as a gift card, an Afecitivo card over
 10 a debit network, talking to people about prepaid
 11 Visa cards or networks or gift cards or this, the
 12 concept of CCMI was card marketing. It was right
 13 in our sweet spot. So as long as I had all these
 14 partners and friends, let's try to create marketing
 15 programs. Technology is only the enabler. It's
 16 marketing and business solutions is what this
 17 business was about. The software alone didn't do
 18 it; the cards didn't do it. The revenue was from
 19 the people in the manufacturing side.

20 (Exhibit 129 marked for identification)

21 Q. Let me show you a document we marked as
 22 Exhibit 129, and this is a memo from Ms. Raider,
 23 again to you, dated April 26th, 2002, and in it she
 24 says hello. I spoke to Henri today and was

1 complaining about a lack of support from IS.

2 What's IS?

3 A IT. The technology group in NAM.

4 Q What was interesting is that Henri said to
5 me that he has raised the issue to Paul again and
6 Carlucci has acknowledged that there were mistakes
7 but that we needed to determine how to move
8 forward. Do you remember receiving this e-mail?

9 A No, but it's more of a she was probably
10 complaining about how Aspen didn't get done and IS
11 was not giving us the people and Bill Adams wasn't
12 supporting -- same thing. and sometimes --

13 Q Same stuff?

14 A -- Henri took off his corporate whatever
15 and realized that it was true. so obviously he
16 says he went to Paul and said help.

17 (Exhibit 130 marked for identification)

18 Q Let me show you a document we've marked as
19 Exhibit 130. and this is an e-mail from Ms. Raider
20 to you dated June tenth, 2002. and it says. toward
21 the end, he wants us to fail. Do you see that?

22 A The --

23 Q Just answer the question

24 A Yes. I see it.

1 A Reckless conduct. when does it become

2 intentional? Gross. reckless. willful stuff

3 (Off the record)

4 (Exhibit 131 marked for identification)

5 Q Let me show you Exhibit 131. And you've
6 already talked about the Longs situation. so I
7 don't think I'm going to ask you anything about
8 this -- about this exhibit

9 (Exhibit 141 marked for
10 identification)

11 Q I'm going to show you a document that we've
12 marked as Exhibit 141

13 A This one first?

14 Q Yeah. And it is an e-mail from Ms. Raider
15 to you dated December 4th, 2002. The subject is
16 Mike Cleary's operational team. And in this
17 letter, Ms. Raider is expressing her being upset at
18 hiring decisions made by NAM in Connecticut. right?

19 A Appears to be No justice

20 Q More venting on Ms. Raider's part?

21 A No, more frustration

22 Q What's that?

23 A More frustration

24 Q And the e-mail is her venting to you?

1 Q And who is the he?

2 A Benson. David Benson was the CIO of News
3 America Marketing.

4 Q And when did Mr. Benson join the company.
5 to the best of your knowledge?

6 A He joined it after the acquisition

7 Q And what evidence do you have, if any, for
8 the conclusion -- well, let me ask you this
9 question. Did you share Ms. Raider's view that
10 Mr. Benson wanted you to fail?

11 A It's lack of focus. I don't know if it was
12 -- he was so intentionally to destroy us. He had a
13 lot of other things to do, but after the
14 acquisition, we had to wait until they got a new
15 CIO, and all the people we trained when he came in
16 were taken to other places. and then when he got
17 here, he said he was busy. And she's just saying
18 -- this is in 2002 -- that the people on his staff
19 that were doing our work were released and that our
20 -- they were doing the internal work on the Ahold
21 situation. And we probably were in the middle of
22 bidding on the prepaid business. I don't know
23 Did I answer the question?

24 Q You did. You can stop now

1 A No, it's just advising me. She wasn't
2 venting. She's telling me facts that would affect
3 the company's business

4 (Exhibit 132 marked for identification)

5 Q And let me show you Exhibit 132, which is
6 your performance appraisal for 2002. And in
7 overall achievements, there is a long paragraph
8 about you that's very favorable. Do you see it?

9 A Yes

10 Q Do you agree with it?

11 A Yes, that's accurate

12 Q Okay. And in areas for focus, improvement,
13 it says Bob needs to focus in on two or three
14 specific solutions and bring them to completion.
15 While reviewing new products and talking with
16 developing companies is interesting, the business
17 needs to get deliverables into the hands of the
18 sales team. Bob has spent a disproportionate
19 amount of time on the Afectivo program that has
20 cost the company an enormous amount of T and E and
21 time. In addition, Bob needs to continue to
22 develop his office interpersonal skills. Do you
23 agree that?

24 A No

1 non-managerial -- he noticed I was the general
 2 manager of the division, but I managed nobody
 3 Let's see It's backwards
 4 Q It's on the last page, page 796.
 5 A Yeah
 6 Q So tell us, what was your special job
 7 objective in 2003?

8 A To sell more stored value sales, product
 9 sales

10 Q And this was an appropriate special job
 11 objective for Mr. Lellouche to give you, correct?

12 A Well, I had been marginalized out of the
 13 core business and they just said just do this and
 14 that's what I was doing. Was it what I wanted to
 15 do? No I wanted to run this company as the basis
 16 of the bargain on which I made the deal and now I
 17 was just put on the sidelines and doing the best I
 18 could to create new things

19 Q And you remember that in your employment
 20 agreement, which you signed, you -- you agreed to
 21 do whatever jobs that News America Marketing
 22 assigned to you, correct?

23 A No

24 Q Okay Did you accept the special job

1 e-mail is EO year four, and I take it that means
 2 earn-out year four?

3 A Yes

4 Q Okay And you have an e-mail here that you
 5 sent to Robert Coughlin on March 8th, 2004 at 5:44.
 6 correct?

7 A Yes. Wait a minute Which one?

8 Q It's right in the middle of the page on RC
 9 431

10 A The last one?

11 Q No, first page right in the middle. You
 12 see -- it's part of a chain

13 A Okay. I got it.

14 Q Do you see it? I'll just read the e-mail
 15 Robert doesn't look like Ann did much at all
 16 Meanwhile, Louise's account is in trouble.
 17 Fountains, BHCC, Accuware, etc., are months behind
 18 I am home tomorrow Please discuss Bob. Do you
 19 see that?

20 A Yes.

21 Q You are the Bob, right?

22 A I'm Bob and he's Robert

23 Q And Robert is Robert Coughlin And you
 24 said in the first line doesn't look like Ann did

1 objective that you were given in your 2003
 2 performance appraisal?

3 A By signing this, you didn't accept or
 4 reject. You just acknowledged receipt of it

5 Q Okay. But apart from your signature, did
 6 you accept the special job objective that you were
 7 given?

8 A Yeah. I worked -- I went after this and I
 9 achieved it

10 Q Did you achieve it?

11 A Yes.

12 Q What did you deliver in terms of dollars in
 13 sales for the -- for the next fiscal year?

14 A I don't remember the years, but I think
 15 this was I went out and finished the Ahold deal.
 16 which you say didn't happen. Maybe we should ask
 17 Ahold. There's people over in Quincy that know the
 18 contract was done

19 (Exhibit 136 marked for identification)

20 Q Okay. I've just given you a document which
 21 we've marked as Exhibit 136, and it's an e-mail
 22 from Robert Coughlin to himself, but it also
 23 contains in the middle of the page an e-mail from
 24 you to Robert Coughlin, and the subject of the

1 much at all, right?

2 A Yes

3 Q And you're referring to Ann's sales in
 4 earn-out year four?

5 A No. No. Not at all

6 Q What are you referring to?

7 A You left my mother out. Louise

8 Q We'll get to Louise.

9 A I was talking about we got this sheet and
 10 she was supposed to review the calculations in the
 11 earn-out to lay out issues of where they are off
 12 and what we needed to do, like we did every year

13 Q Raise rate questions?

14 A Yeah, and she didn't do it. She just sent
 15 it to me; you do it this year

16 Q So you're not referring to Ann's
 17 productivity; you're referring to the fact that she
 18 didn't do the kind of review of the earn-out
 19 calculations?

20 A Right. And he was no longer with the
 21 company and he was helping me at home with some
 22 personal stuff, and he knew how to do this because
 23 he had helped us over the course of time

24 Q Had you paid him for the help that he had

1 provided you during the previous earn-out years
 2 when he was working or News America Marketing?

3 A No He was doing it as a favor

4 Q And did he do this work on company hours or
 5 did he do it on his own time?

6 A He did it -- what he did for us he did on
 7 his own time

8 Q And did he do it at the office or did he do
 9 it at home?

10 A He did it at home.

11 Q You're sure about that?

12 A I'm not positive but this is what an
 13 hour

14 Q And the reference to Louise is a reference
 15 to your mother?

16 A Yes

17 Q And the reference to all these other things
 18 have to do with personal things?

19 A Family business yes

20 (Exhibit 137 marked for identification)

21 Q And let me show you a document that we've
 22 marked as Exhibit 137 and Exhibit 137 is your 2004
 23 performance appraisal right?

24 A I don't know I never received this.

1 A Oh it was about -- I don't know January
 2 or February of 04.

3 Q And was it about that time that you had the
 4 meeting with Mr. Garofalo that you had mentioned
 5 earlier?

6 A Yeah that I would meet with Marty When
 7 he came to Boston. I'd have to meet him outside the
 8 office.

9 Q But there was a meeting that you recounted
 10 earlier in which I think you told us that
 11 Mr. Garofalo had come to Boston to try to convince
 12 you to leave the company?

13 A No no Right He was -- he was told to
 14 try to do that and then he tried to work with me
 15 and then they tried to just keep me quiet just
 16 come up with a big deal. and I only assumed that
 17 Mr. Carlucci said get him gone. I don't care if
 18 he's got a contract. I don't care

19 Q I'm just trying to date that meeting. Did
 20 that occur about the same time as you left your
 21 office at the John Hancock building?

22 A I was ordered out of the building

23 Q Okay

24 A I was constructively -- not constructively.

1 Q You've never seen it before?

2 A No I never received it.

3 Q Okay

4 A In the normal process an employee fills
 5 one in and he sends it to his supervisor and then
 6 they come back and there's a review and an
 7 interchange. This is about the time when Henri
 8 just -- I sent it to Henri and there was no
 9 response. And then I told you about the meeting
 10 with Marty Garofalo. And while every employee of
 11 the company got a review I wasn't given a review
 12 or a meeting or the right process followed. and I
 13 was the only one in the corporation. And I saw
 14 this in one of the documents produced. but I never
 15 knew that this was even done. so I filled this in
 16 -- so every year you fill it in and you write your
 17 own stuff and then your advisor looks at it and
 18 talks it over and comes back and you agree on what
 19 it is and you sign it. both people sign it. Mine's
 20 never been signed. It was never reviewed. They
 21 locked me out of my own office. That's why none of
 22 this is filled in and no one's ever signed it.

23 Q When was it that you think you were locked
 24 out of your own office?

1 Evicted from my --

2 Q I'm just trying to determine whether your
 3 meeting with Mr. Garofalo took place at the same
 4 time -- at or about the same time as when you left
 5 the office at the Hancock building

6 A No I met with Marty. and everything was
 7 fine for weeks or a month or so after that. and all
 8 of a sudden he called up and said you've got to
 9 leave today. So the appraisal -- there's no date
 10 on this appraisal; there's no signature on this
 11 appraisal

12 Q There's a cover page to it which gives a
 13 date.

14 A So this was sent from Henri.

15 Q But I'm just -- I'm trying to get the date
 16 of your conversation with Mr. Garofalo. Do you
 17 think that the meeting with Mr. Garofalo that you
 18 referenced took place --

19 A Prior to this date

20 Q Took place prior to this date. but it also
 21 -- it took place prior to January of 2004?

22 A I don't remember. I don't know how long
 23 Henri held this before he sent it to them and not
 24 back to me. I'm sure Henri was in a dilemma of

1 whether he should be doing it at all in light of
 2 Marty trying to have some direct thing, but you
 3 know, as far as giving me the respect of any other
 4 employee in the company, for no reason, I was --
 5 because I wouldn't sign the termination and release
 6 and leave. I wasn't appraised and then I was just
 7 for no reason, no written or oral reason. I was
 8 asked not to go to the Boston office any more.

9 Q And this -- I'm just trying to date it
 10 This happened sometime in --

11 A Sometime in '04.

12 Q And your meeting with Mr. Garofalo took
 13 place a few months before that event?

14 A Yeah, I'm going to say it's February or --
 15 I don't know I don't remember.

16 Q But it was in your final year with News
 17 America Marketing?

18 A There was like six or seven or eight months
 19 left. I was trying to get something done

20 Q I'm just trying to identify when the
 21 meeting took place

22 (Exhibit 138 marked for identification)

23 Q I'm going to show you a document marked as
 24 Exhibit 138. This is a letter that you received

1 respond to NAM this week or lose right to appeal
 2 Have you figured anything? Are you around? Do you
 3 remember sending this e-mail to Mr. Coughlin?

4 A No

5 Q But you don't have any doubt that you did?

6 A No. I did. I was again asking him to help
 7 with the analysis of the numbers.

8 Q When you said lose right to appeal, what
 9 did you mean?

10 A I think we had so many days to just raise
 11 issues within the -- send something that could
 12 raise issues and then discuss it I think we had
 13 so many days to give an answer

14 (Exhibit 140 marked for identification.)

15 Q Let me show you a document that we've
 16 marked as Exhibit 140. It's an e-mail from you
 17 dated November 24th, 2004; subject: no subject
 18 Did you write this document?

19 A I don't recall Yeah, I forgot about
 20 Spartan's

21 Q Well, what is this document?

22 A I have no idea

23 Q Do you believe you wrote it?

24 A I don't recall Where did it go? Who is

1 from Mr. Garofalo dated November 19, 2004. Do you
 2 remember receiving this?

3 A Yes

4 Q And in it he states that your employment
 5 terminated on September 30th, 2004?

6 A Right

7 Q And he also says that you could contact him
 8 or another NAM executive committee member if you
 9 have a business idea that you would like to pursue
 10 with News America Marketing, right?

11 A Yes

12 Q And have you contacted him or any other
 13 News America Marketing executive committee member
 14 since receiving the November 19th, 2004 letter from
 15 Mr. Garofalo?

16 A No, I haven't

17 (Exhibit 139 marked for identification)

18 Q Let me show you a document that we'll mark
 19 as Exhibit 139, and I want to call your attention
 20 to the e-mail at the bottom of the page from you to
 21 Robert Coughlin dated November 22, 2004. Do you
 22 see that? It says subject: FYI?

23 A Yes

24 Q Okay. And you write Robert, we need to

1 it -- I don't remember this document. I remember
 2 some of the things in it

3 Q Okay. You say at the bottom we are
 4 reviewing this matter with our attorneys and make
 5 demand upon you, blah, blah, blah. Do you see
 6 that?

7 A Yes

8 Q Do you know what you were referring to?

9 A No

10 Q In the middle of the page, there's a
 11 paragraph that says finally, even after Safeway
 12 Marketing Services tried to politically influence
 13 that contract, Ahold, through Stop & Shop Stores,
 14 advised our team that they would deliver the
 15 contract document that would memorialize the
 16 agreement and order their tech group to finish the
 17 link to a processing pub. Did you write that
 18 sentence?

19 A I don't remember

20 Q There's a reference here to Stop & Shop
 21 Stores advising our team. Do you know what the
 22 reference to our team is?

23 A Well, it would be SmartSource Direct
 24 Well, the team. It might be Airwaves SmartSource.

1 In-Com. whoever was providing the infrastructure to
 2 deliver the contract It was mostly Airtime and
 3 us

4 Q. And this is the contract that you contend
 5 News America Marketing backed away from in order to
 6 curry favor with Safeway?

7 A. Yes, absolutely

8 Q. Okay. And in this sentence, you're saying
 9 that Stop & Shop Stores advised our team, right?

10 A. Yes, we found out from Stop & Shop that --

11 Q. And who at Stop & Shop did you receive
 12 information from?

13 A. I didn't Ann did

14 Q. And who did Ann receive information from?

15 Do you know?

16 A. I don't remember the name.

17 Q. Okay. And what was advised, according to
 18 this document, is that they would deliver the
 19 contract document that would memorialize the
 20 agreement?

21 A. That's what it says

22 Q. Okay. So it's a fair statement, is it not.
 23 that as of this writing there was not a signed
 24 contract document, correct?

1 Q. When the contract was not delivered and no
 2 good answer coming from your company, I called Stop
 3 & Shop directly and was told by them that the News
 4 America Marketing and its division SmartSource
 5 Direct had withdrawn from the contract award. Have
 6 I read that correctly? Right?

7 A. That's what it reads

8 Q. And this is from an e-mail that you
 9 generated?

10 A. I don't remember. It may have been someone
 11 else. It may have been from Airwaves. I mean, it
 12 seems like they were the ones that --

13 Q. But this document says from Bob Fireman.

14 R. Fireman. SIV Partners dot com?

15 A. Well, it must have been sent to me or it's
 16 on my thing, whatever. I don't remember

17 Q. Well, it wasn't sent to you. It was a
 18 document you generated?

19 MR. PETERS: You're representing in
 20 your question that he sent it to --

21 MR. KATZ: I'm not representing he sent
 22 it to anybody.

23 Q. (BY MR. KATZ) I'm just saying you wrote
 24 it. You may have sent it to no one.

1 A. I don't remember

2 Q. Okay.

3 A. I mean, I think there was a --

4 MR. PETERS: Where are you referring to
 5 now, Gordon?

6 MR. KATZ: I'm still referring to the
 7 first sentence in the third full paragraph, but let
 8 me go on and ask my next question

9 Q. (BY MR. KATZ) It says when the contract
 10 was not delivered and no good answer coming from
 11 your company, do you see those words?

12 A. No. Where is it?

13 Q. It's the next sentence in paragraph three
 14 When the contract was not delivered and no good
 15 answer coming from your company, do you see those
 16 words?

17 A. Yes

18 Q. Okay. And what you're referring to here is
 19 that the contract was not delivered by Stop & Shop
 20 to News America Marketing?

21 A. I don't know what it's referring to. I
 22 mean, it's saying --

23 Q. Well, let me read the whole sentence

24 A. Sure

1 A. Oh, I don't know if I wrote it. I don't
 2 remember

3 Q. Who else would have written it?

4 A. I don't know. Maybe Airtime wrote it

5 Q. So you think that Airtime might have had
 6 access to your e-mail account and written an e-mail
 7 under your name?

8 A. I don't know why it's on my e-mail, but it
 9 looks to be true.

10 Q. And what is it that looks to be true?

11 A. The facts in it

12 Q. And the fact is that the contract was not
 13 delivered by Stop & Shop to New America Marketing.
 14 right?

15 A. I don't know if that was that. We were
 16 working under --

17 Q. Just answer my question yes or no

18 A. I don't know.

19 Q. Okay. That's an answer. Let me ask my
 20 next question. You then say that I called Stop &
 21 Shop directly. You write that, correct?

22 A. I didn't say I wrote it and I didn't call
 23 Stop & Shop.

24 Q. Okay. So you don't remember ever calling

1 anybody at Stop & Shop regarding this issue?

2 A Right I never did

3 Q Okay So it's untrue. the statement that
4 is contained in paragraph three where you say I
5 called Stop & Shop directly?

6 MR. PETERS: Objection to the form of
7 the question.

8 A I didn't say it I didn't say I did. and I
9 didn't write I did

10 Q (BY MR. KAIZ) So you don't think -- the I
11 that's referred to here is someone other than
12 yourself? Is that what you're saying?

13 A It's not me.

14 Q It's not you? Okay Even though this is
15 an e-mail that is on its face authored by you?

16 A Well, it's got my web address up there

17 Q It's got your e-mail address right?

18 A Yes

19 Q And this was a document that was produced
20 by your counsel right?

21 A I don't know where it came from

22 Q Well if you take a look at the lower
23 right-hand corner, it says FR 583. and you'd agree
24 with me that that is a Bates stamp that indicates

1 A I don't remember his name I think I
2 worked with Jordan on this too. And it was a long
3 time before

4 What happened is we finished the
5 contract and everything was agreed, and Ahold was
6 going through some consolidations on their
7 technical thing and they couldn't implement it
8 until they finished something in their IT group
9 And so Bi-Lo, which is one of the divisions, said I
10 don't care about implementing it on the server
11 We'll roll it out right now So we had Bi-Lo up
12 and running in all stores. its program

13 Finally, the software was done and they
14 were ready to roll it out to do it online. all
15 divisions, and Ann -- I don't know. Ann found out
16 and then Henri got Ann on a call, and she
17 testified, as we know, that -- that basically,
18 there was a call and News America and Henri and the
19 powers that be decided that they were telling them
20 we were going out of the business and to give it to
21 Safeway Marketing Systems, and that's what
22 happened

23 Now, this looks to be something that
24 Airtyme might have called and confirmed that.

1 that it came from documents that were in your
2 possession, right?

3 A Yes That appears to be correct.

4 Q Okay And what is being said in this
5 e-mail, which appears to have come from -- from
6 your files, is that you called Stop & Shop directly
7 and was told by them that News America Marketing
8 and its division SmartSource Direct had withdrawn
9 from the contract award, right?

10 A That's what it says

11 Q And withdrawn from the contract award means
12 that they withdrew from the competitive bidding
13 process for the contract award, correct?

14 A No.

15 Q Well, it means that they withdrew from
16 consideration being awarded the contract?

17 A No, no, no. The RFP was finished. We had
18 won. We spent a year or two. Airtyme -- this
19 seems to be something that Airtyme did. The
20 contract was delivered. It was being negotiated
21 Ahold had just consolidated some stuff and the work
22 of this was centered around Stop & Shop I worked
23 with the attorney at Stop & Shop.

24 Q Which attorney?

1 because Airtyme had bought displays and they had
2 invested infrastructure and partners and had deals
3 with TracPhone and Alltime and AT&T and this was a
4 \$50 million contract. And Henri, you know, behind
5 the scenes just did this

6 Q Are you suggesting that News America
7 Marketing breached a contract that it had with
8 Ahold?

9 A No, they got Ahold to release them from the
10 contract and they took the business elsewhere.
11 They breached the contract to take the revenue out
12 of our agreement. They absolutely cost our
13 partners a year and a half and tens of thousands of
14 dollars, and they were trying to throw Floor
15 Graphics, I think, out of Safeway, and they were
16 going to do anything for Safeway they can at the
17 expense of SmartSource Direct or anybody. And I
18 believe Safeway was sued subsequently and paid
19 \$10 million that NAM probably reimbursed them for.
20 and NAM's being sued now and K-Mart is being sued
21 for like \$60 million

22 Q Who sued Safeway?

23 A Floor Graphics. Floor Graphics is suing
24 K-Mart for, again, wrongful intervention. I think

1 News has guaranteed that case It's in the state
 2 -- federal court in Chicago. and there's a suit
 3 going on in Trenton. in the federal court in
 4 Trenton for wrongful and unethical conduct by News
 5 America Marketing

6 Q Have you been involved in any of those
 7 suits?

8 A No

9 Q Have you spoken to counsel representing any
 10 of the parties in any of those suits?

11 A I don't know if I can answer that question
 12 Yeah. I've spoken to counsel

13 Q Who have you spoken to?

14 A I spoke to Phil Isaacson

15 Q And who does he represent?

16 A Floor Graphics.

17 Q And when did you speak to him?

18 A Oh. months ago.

19 Q And have you provided him with any of the
 20 documents that have been disclosed in discovery by
 21 News America Marketing in this case?

22 A No. The -- no

23 Q Did you want to say something more?

24 A The facts are different. The documents are

1 to call you as a witness in this case?

2 A No.

3 Q Did Ms. Raider speak to anyone representing
 4 a party adverse to News America Marketing in any
 5 pending litigation other than this one?

6 A I don't know

7 Q Was she with you when you met with

8 Mr. Isaacson?

9 A I believe she was. now that I think about
 10 it

11 Q Okay. And where --

12 A We had a lunch

13 Q Where did the meeting take place?

14 A In the Marriott

15 Q Which Marriott?

16 A Newton

17 Q Did you reveal only information about News
 18 America Marketing to Mr. Isaacson?

19 MR. PETERS: Objection

20 Q (BY MR. KATZ) Let me rephrase that
 21 question Did Mr. Isaacson take notes during your
 22 meeting?

23 A No.

24 Q And to the best of your recollection -- did

1 different

2 Q Did you -- let me ask this question Did
 3 you provide Mr. Isaacson with any documents
 4 whatsoever?

5 A No.

6 Q How long did you speak to Mr. Isaacson?

7 A Oh. I don't know; 45 minutes

8 Q Have you met with him in person?

9 A Yeah, he was in Boston

10 Q Did he come to Boston specifically to meet
 11 with you?

12 A I don't know

13 Q And have you spoken to any attorney who
 14 represents any of the parties that are in
 15 litigation with News America Marketing other than
 16 Mr. Isaacson?

17 A No

18 Q He's the only attorney you've spoken to?

19 A Yes.

20 Q And have you been identified as a witness
 21 in any case where News America Marketing is a party
 22 other than this one?

23 A No.

24 Q Has Mr. Isaacson told you that he intends

1 you take notes during your meeting?

2 A No

3 Q Did you have an outline during your
 4 meeting?

5 A Did I have an outline? No.

6 Q And how did Mr. Isaacson find you?

7 MR. PETERS: Well. objection I mean.
 8 I guess your -- your question is did he tell you
 9 how he located you?

10 Q (BY MR. KATZ) Did he tell you how he
 11 located you?

12 A I know how he located me

13 Q Tell me. please

14 A Through the people at Floor Graphics

15 Q And did someone at Floor Graphics contact
 16 you before your meeting with Mr. Isaacson?

17 A Yeah No. I spoke with --

18 Q Who did you speak to at Floor Graphics
 19 prior to your meeting with Mr. Isaacson?

20 A Well. I spoke to the principals of Floor

21 Graphics

22 Q Can you identify them by name. please?

23 A George and Richard Rebh

24 Q And how long -- and they called you. or did

1 you call them?

2 A We didn't meet over this issue

3 Q Well, no I'm just asking you --

4 A No, no I've spoken to them, and I've
5 spoken to them --

6 Q Did you initiate the call to the principals
7 of Floor Graphics?

8 A No They -- I met them through a business
9 venture that I was doing

10 Q What business venture was that?

11 A Looking to develop a new kind of technology
12 for authentication.

13 Q And how was it that you found -- that you
14 connected with the principals of Floor Graphics
15 over this project?

16 A I met them through -- through a friend of
17 mine.

18 Q And what is your friend's name?

19 A Seth Epstein

20 Q And how was it that Seth Epstein brought
21 you together?

22 A Because we were thinking of building a
23 business over some technology

24 Q And so what does Mr. Epstein do for a

1 something

2 Q And how much has Floor Graphics put in?

3 A Floor Graphics has put in nothing. This
4 has nothing to do with Floor Graphics. Individuals
5 put in some money

6 Q Okay And the idea was you'd try to get
7 Floor Graphics to be an investor in this project?

8 A No, no, no. The individuals of Floor
9 Graphics. It had nothing to do with Floor
10 Graphics. I don't know Floor Graphics. I've never
11 been to Floor Graphics. I have nothing to do with
12 Floor Graphics. These guys are -- I looked at as
13 investors who may have some sales acumen. It has
14 nothing to do with any of this. When that
15 happened, I found out they were in a lawsuit also
16 against News America Marketing, and that's it.

17 Q Were you the one who approached the
18 principals of Floor Graphics --

19 A No

20 Q -- to see if they would be interested --

21 A No

22 Q -- in investing in this project?

23 A No

24 Q Was it Mr. Epstein who approached them?

1 living generally?

2 A Mr. Epstein runs a company in Connecticut
3 called Tactical Res -- I don't know. IRS

4 Q Okay And did Mr. Epstein suggest to you
5 that you should call the people at Floor Graphics
6 regarding this project?

7 A No, no. He had them -- he had them invest
8 in some stuff we were doing. He thought they would
9 be a good partner as a sales group and a potential
10 investor and we put some money into a new venture

11 Q And what's the name of the venture?

12 A It's called Me For Sure.

13 Q And you put money into it?

14 A Yes

15 Q How much?

16 MR. PETERS: Why is that germane? I
17 mean, now we're just asking questions as the time
18 fritters away

19 Q (BY MR. KATZ) I'm just trying to figure
20 out the dimension of the project.

21 A Oh, it's in infancy. It's just been in
22 conversation --

23 Q And how much --

24 A I put in, I don't know, \$50,000 or

1 A Yes. Seth thought they would be a
2 candidate

3 Q So tell me how we get from Mr. Epstein
4 approaching the principals of Floor Graphics for
5 investment in the project that you and Mr. Epstein
6 are participating in to you having a meeting with
7 Floor Graphics' attorney

8 A Oh, because we shared a common irony that
9 we were both suing News America Marketing

10 Q And how did you learn that?

11 A I don't know. I just think they told me,
12 you know. Obviously --

13 Q Did you have a meeting with them at some
14 point?

15 A I met them a few times in Washington about
16 the project, but I was -- became aware of their
17 lawsuit and I became aware of some of the things
18 about it

19 Q When did you first meet them?

20 A Oh --

21 Q When?

22 A I want to say four or five months ago.

23 Q Okay And how many times have you met them
24 since?

1 A Twice, three times.

2 Q Where?

3 A I don't know. We meet in Washington where
4 the project is

5 Q And who is running the project?

6 A No one right now.

7 Q Okay. And they've yet to invest any money
8 in the project?

9 A They have. They've put money in. We're
10 working on it.

11 Q As principals they've invested?

12 A Yeah, as principals.

13 Q And approximately how much have they
14 invested?

15 A I don't know. Probably 50, 60, 70,000.

16 Q And through these meetings, you came to
17 discuss the irony, as you called it, that you both
18 are adverse to News America Marketing?

19 A Yes. We found out we were both suing News

20 Q And again, how did we get from the
21 discovery of that irony to you and Ms. Raider
22 meeting with their attorney at the Newton Marriott?

23 A Oh, because they asked me if I would talk
24 to their attorney and I said I would be happy to

1 that arbitration and, you know, it made me --
2 reminded me of things that, you know, why I was
3 taken to Safeway to entice Safeway Marketing
4 Systems to develop my stored value cards, but I
5 know that Henri and Marty's sole purpose was to get
6 the core business back, the Floor Graphics
7 business, and I knew there was a general sense in
8 the company to do anything to get the Floor
9 Graphics business back. And that's what I knew at
10 Safeway and I knew that at K-Mart.

11 Q Did you discuss your understandings of the
12 strategic direction that News America Marketing
13 had?

14 MR. PETERS: Objection to the form of
15 the question.

16 A No, I don't know them.

17 Q (BY MR. KATZ) Okay.

18 A I knew that everybody -- everybody in the
19 world --

20 MR. PETERS: You answered no.

21 A Okay.

22 Q (BY MR. KATZ) What else do you remember
23 telling Mr. Isaacson?

24 A That's all I told him about the situation.

1 Q And tell me everything you remember that
2 was stated in your meeting with the attorney at the
3 Newton Marriott.

4 A I just gave some general background into
5 what we did and our experience with News America
6 Marketing and our lawsuit, and I said if -- if we
7 could share some information about -- and help each
8 other, it would be good.

9 Q Well, what did you discuss insofar as the
10 business plans of News America Marketing with
11 Mr. Isaacson?

12 A Nothing.

13 Q What questions did he ask you?

14 A I don't know the business plans. I didn't
15 know the business plans of News America when I
16 worked there, and we're talking years later.

17 Q What questions did Mr. Isaacson ask you?

18 A I don't remember.

19 Q You don't remember any question he asked
20 you?

21 A Generally, we talked about Safeway. That's
22 why this thing refreshed my recollection. We
23 talked about Safeway. That's how I learned about
24 his arbitration thing at Safeway and how he won

1 at Ahold, but I don't think it was relevant to
2 them.

3 Q What other situations did you tell him
4 about?

5 A That's it.

6 Q You spent the whole time in your meeting
7 talking about the Ahold and Safeway situation?

8 A No, I told him about my situation --

9 Q Okay. So you talked about --

10 A -- to see if there was anything he could
11 add to help me.

12 Q Did he have anything to help you?

13 A He might have some evidence of bad conduct
14 by News America Marketing in its dealings.

15 Q Did he state anything specifically?

16 A He stated some people were studying it and
17 he might make it available to me, but he hasn't as
18 of yet.

19 Q Was he any more specific than that?

20 A No, he mentioned there was another company
21 suing News as well. I don't remember their name.

22 Q So you discussed your situation, you
23 discussed that he might be able to provide some
24 information to help you, correct?

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1 A Some evidence of bad conduct in business --
 2 Q Okay.
 3 A -- unethical conduct
 4 Q You discussed what you perceived to be the
 5 Ahold situation. correct?
 6 A Yes

7 Q Okay And do you remember discussing
 8 anything besides those two subjects?

9 A No.

10 Q Have you had any conversations on the
 11 telephone with Mr Isaacson or anyone from his
 12 office since that meeting?
 13 A No

14 Q Have you had any e-mails with Mr. Isaacson
 15 or anyone from his office since your meeting at the
 16 Newton Marriott?

17 A Not that I recall

18 Q And to the best of your recollection, you
 19 think that the meeting with Mr Isaacson took place
 20 about three months ago? Is that what you told us?
 21 Do I have the date wrong?

22 MR PETERS: I thought he said four.

23

1 between Safeway and Ahold That's all Believe
 2 me I'm not a major portion of his activity I
 3 wish I was, but I'm not.

4 Q Did you tell him about what you perceived
 5 to be Mr Lellouche's involvement with Safeway and
 6 Ahold?

7 MR. PETERS: Specifically?

8 MR. KATZ: Yes

9 MR. PETERS: Using Mr Lellouche's
 10 name?

11 MR. KATZ: Yes

12 A Yeah, I may have Mr. Lellouche I believe
 13 was -- he's the guy that pulled the rug He's the
 14 guy that had the relationship with Safeway
 15 Marketing Systems I don't know what he did. He
 16 pulled the rug on everybody, he didn't care who he
 17 hurt, and he did it for the benefit of News America
 18 Marketing or himself

19 Q (BY MR. KATZ) And you told Mr. Isaacson
 20 all of the facts as you knew them related to the
 21 Ahold and Safeway situation? Is that --

22 A Well, there's not a lot of facts I know

23 Q But whatever you knew, you told him?

24 A I think I just told you. What I've told

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1 but the record will say what it says.
 2 Q (BY MR. KATZ) Okay What's your
 3 recollection?
 4 A I don't remember. It was a while ago
 5 I'll find out and I can provide that to you.
 6 Q Was it in the winter; was it in the fall?
 7 A No, no, no It's only been in the last
 8 three or four months

9 MR. PETERS: I'm now at the point where
 10 I'm running to get the train

11 MR. KATZ: We're in the final --

12 Q (BY MR. KATZ) Just so that I'm clear,
 13 could you summarize for us what again you told
 14 Mr Isaacson about the Ahold situation?

15 MR. PETERS: No I mean, I'm not going
 16 to instruct him not to answer but you're going to
 17 get my strong objection at this late hour when you
 18 know I'm running to get the train He told you
 19 what he said

20 Q (BY MR. KATZ) I'm just wondering is there
 21 anything that you can add to what you've already
 22 said about what you told Mr Isaacson?

23 A No I gave him a general sense of what
 24 this lawsuit was about and the situation that I had

1 you now --

2 Q And everything that you believed to be true
 3 you told Mr Isaacson?

4 A That's the only way I know how to do things
 5 is to tell the truth

6 Q Okay. Thank you

7 (Off the record.)
 8 (Whereupon the deposition was adjourned
 9 at 6:32.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 MIDDLESEX, ss

3

4 I, Marianne R. Wharam, Certified Shorthand
5 Reporter, Registered Professional Reporter and
6 Notary Public in and for the Commonwealth of
7 Massachusetts, do hereby certify that
8 ROBERT N. FIREMAN, the witness whose deposition is
9 hereinbefore set forth, was duly identified and
10 sworn by me and that such deposition is a true
11 record of the testimony given by the witness

12 I further certify that I am neither related to
13 or employed by any of the parties in this action,
14 nor am I financially interested in the outcome of
15 this action.

16 In witness hereof, I have hereunto set my hand
17 this fourth day of June, 2007

18

19

20 Marianne R. Wharam, CSR/RPR

21 Notary Public

22 CSR No 1426S96

23 My commission expires:

24 August 7, 2009

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1 C E R T I F I C A T E

2 I, ROBERT N. FIREMAN, do hereby certify
3 that I have read the foregoing transcript of my
4 testimony, and further certify under the pains and
5 penalties of perjury that said transcript is a true
6 and accurate record of said testimony, with the
7 exception of the following corrections listed
8 below:

9 Page Line Correction
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 ROBERT N. FIREMAN

24 Dated this _____ day of _____, 2007

EXHIBIT G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT FIREMAN and ANN RAIDER,)
Plaintiffs,)
v.) CIVIL ACTION NO. 05-1740MLW
NEWS AMERICA MARKETING IN-STORE,)
INC.,)
Defendant.)

)

**ROBERT FIREMAN'S ANSWERS TO FIRST SET OF INTERROGATORIES
PROPOUNDED BY THE DEFENDANT**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Robert Fireman ("Mr. Fireman") hereby objects and responds to Defendant News America Marketing In-Store, Inc.'s ("NAM") First Set of Interrogatories as set forth below.

GENERAL OBJECTIONS

The following General Answers and Objections are applicable to, and are hereby incorporated by reference into, each and every one of Mr. Fireman's Specific Answers and Objections to each Interrogatory:

1. Mr. Fireman objects to the interrogatories to the extent that they seek information which is protected by the attorney-client privilege, which constitutes work product, or which is otherwise protected from discovery.

2. Mr. Fireman objects to the interrogatories to the extent that they seek information that is not relevant and/or not reasonably calculated to lead to the discovery of admissible evidence.

3. Mr. Fireman objects to the interrogatories on the grounds that they are overly broad and unduly burdensome and/or duplicative.

4. Mr. Fireman objects to the interrogatories, including without limitation the definitions and instructions, to the extent that they purport to impose obligations on him beyond those included in Mass. R. Civ. P. 26 and 33.

5. Mr. Fireman objects to the interrogatories on the grounds that they are vague, ambiguous, and confusing.

6. Mr. Fireman's willingness to answer any particular Interrogatory is not a concession that the subject matter of the particular Interrogatory Answer is relevant to this action or that the answer is admissible at trial.

7. The information disclosed below has been provided after a diligent search. Mr. Fireman reserves the right to supplement these answers.

8. Mr. Fireman reserves the right to rely at the time of trial or in other proceedings in this action upon documents, things, and evidence in addition to that disclosed in these answers regardless of whether any such documents, things, or evidence are newly discovered or currently in existence.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO.: 1

State the name and current address of each and every expert witness that you intend to call at the trial of this matter, including in your answer:

(a) the subject matter of the facts and opinions to which each person is expected to testify;

- (b) the substance of the facts and opinions to which each person is expected to testify;
- (c) a summary of the grounds for each opinion, and
- (d) the education, business, professional or other experience, as well as any other facts that will be offered at trial to prove the qualifications of each expert

ANSWER NO.: 1

Mr. Fireman has not determined which expert(s), if any, he intends to call as witness(es) on his behalf at the trial in this matter. Mr. Fireman agrees to supplement this answer in compliance with any Pre-Trial Order or Rule of Court.

INTERROGATORY NO.: 2

Describe in detail any and all contracts, agreements or understandings between you and NAM.

ANSWER NO.: 2

Mr. Fireman objects to this Interrogatory as it is overbroad, vague and neither relevant nor likely to lead to the discovery of admissible evidence. Mr. Fireman further objects by noting that there were countless "contracts, agreements or understandings between me and NAM." It is impossible to recount, in the form of an interrogatory answer, all "contracts, agreements or understandings" reached over several years. Mr. Fireman also incorporates by reference his interrogatory responses 5-7 and 10-12. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman responds as follows:

Consumer Card Marketing, Inc. ("CCMI") was operating as a profitable

company generating over \$8 million dollars in sales in 1999 with a national reputation in the supermarket and other channels as a leader in loyalty marketing. To accelerate its growth and continue to maintain a leadership position, CCMI sought a business relationship with a highly visible national company which could provide sales and financial and other support to deliver on CCMI's five (5) year business plan. NAM approached CCMI, reviewed CCMI's business plan (which was designed to achieve \$50 million in sales growth within five years) and NAM agreed to purchase CCMI with the agreement that it would commit its resources and run CCMI in such a way as to permit it to execute the plan.

NAM agreed to provide CCMI with the use of its expansive retailer and manufacturer sales force who was selling their current products, and expose CCMI to NAM's relationships with worldwide affiliates of News Corporation and the Fox Entertainment Network. The entire premise upon which CCMI entered into the August 13, 1999 Stock Purchase Agreement with NAM was NAM's express agreement, commitment and representation to use its sales force and relationships to support CCMI and sell CCMI's product line to reach the \$50 million sale figure.

NAM represented and agreed that CCMI would continue to operate as an autonomous division of NAM and benefit from its operational and financial support. NAM agreed that Mr. Fireman and Ms. Raider would continue to manage the CCMI's business unit including sales, operations, personnel, and budgets. By way of example only, in a letter dated October 13, 1999, Ms. Raider wrote to Jennifer Jane confirming the parties' agreement that the CCMI name would be maintained and operate as a separate division. This document is incorporated herein by reference pursuant to Fed

R. Civ. P 33(c).

According to a press release issued by NAM on August 19, 1999, "Consumer Card Marketing, Inc. represents an exciting opportunity for New America . . . not only does it complement our existing in-store marketing services but provides retailers with the foundation to build customer loyalty and aid them in increasing profits through targeted loyalty programs." This message was delivered loudly and publicly by Paul Carlucci but NAM never delivered on its promises and commitments.

Further responding, various agreements and contracts were executed by the Plaintiffs in connection with the August 13, 1999 Stock Purchase Agreement and the Stock Purchase Agreement and subsidiary agreements executed in connection with the Stock Purchase Agreement are incorporated herein by reference pursuant to Fed. R. Civ. P 33(c).

INTERROGATORY NO.: 3

Describe in detail any and all prospects or actual clients of CCMI, SmartSource Direct, or SmartSource iGroup.

ANSWER NO.: 3

Mr. Fireman objects to this Interrogatory as it is overbroad, vague and neither relevant nor likely to lead to the discovery of admissible evidence. Mr. Fireman also objects to this request because this information is already within NAM's files and therefore the request is unreasonable and harassing. Upon a narrowing of this Interrogatory, Mr. Fireman will reconsider and respond appropriately.

INTERROGATORY NO.: 4

Describe in detail all sales forecasts, budgets, or projections; financial statements; annual gross, net sales and/or profit; customers; and business plans for CCMI, SmartSource Direct and/or SmartSource iGroup.

ANSWER NO.: 4

Mr. Fireman objects to this Interrogatory as it is overbroad, vague and neither relevant nor likely to lead to the discovery of admissible evidence. Mr. Fireman also objects to this request this information is already within NAM's files and therefore the request is unreasonable and harassing. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman incorporates by reference NAM's annual business plans, which have been produced by both NAM and the Plaintiffs in this matter. Further responding, NAM's business plans demonstrate conclusively NAM violated its agreement to grow CCMI's business consistent with CCMI's business plan. The business plans have been produced in discovery and are within the files of NAM. These documents are incorporated herein by reference pursuant to Fed. R. Civ. P. 33(c).

INTERROGATORY NO.: 5

Describe in detail any differences in the manner in which CCMI was operated, funded, or managed once it was acquired by NAM versus the way in which it was operated, funded or managed prior to the acquisition.

ANSWER NO.: 5

Mr. Fireman objects to this Interrogatory as it is overbroad and vague. Mr.

Fireman also incorporates by reference his interrogatory responses 2, 6-7 and 10-12.

Subject to these, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman states as follows:

Prior to the sale, CCMI was operated by Mr. Fireman and Ms. Raider with advice from its Board Members. Upon the sale, control of the business was lost. Mr. Fireman and Ms. Raider wrote the business plan. They hired the staff, built relationships with clients, attended trade shows, created products, developed a relationship with the press and advertised to the market place the value of its products and services. All actions of the company were designed to generate sales and profits based upon the market needs, to update the product lines and to expand market segments. CCMI had no debt.

Upon sale of the company, the business plan was ignored by NAM. NAM consciously elected not to "run" CCMI at all, but rather to use CCMI's parts to enhance and promote other aspects of NAM's business.

NAM dictated to CCMI all decision concerning staffing and salary and imposed their hiring freeze on CCMI's group. NAM set CCMI's budget, then fired staff and consolidated jobs to NAM, thus taking key pieces of CCMI's business and moving them to make NAM's other divisions more profitable. NAM took these actions while leaving no dedicated, trained staff in place for CCMI. NAM dictated how CCMI could interact with NAM's sales staff, who CCMI could hire as consultants, how to negotiate with vendors, the development plan for software, how and when CCMI could attend trade shows, on changing the company name and on CCMI's annual budgets. NAM provided little or no support for finance, dictated when and how speaking engagements would run and the roles and responsibilities for Mr. Fireman and Ms. Raider.

INTERROGATORY NO.: 6

Describe in detail each business decision that NAM made relating to CCMI that you assert caused injury to you.

ANSWER NO.: 6

Mr. Fireman objects to this Interrogatory as there are literally hundreds of business decisions made by NAM which caused injury and these decisions were made literally on a daily basis. Mr. Fireman also incorporates by reference his interrogatory responses 2, 5, 7 and 10-12. Subject to these, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman provides the following examples of instances where NAM's decision caused the Plaintiffs harm:

- NAM marginalized the role of Mr. Fireman and Ms. Raider - Within a few months of the sale, NAM modified the CCMI's reporting structure. CCMI went from reporting to David DeVoe Jr., the CFO to Henri Lellouche, Vice President, then promoted Mr. Lellouche to Senior Vice President. Mr. DeVoe then created the Smart Source iGroup. By the end of the year, NAM had taken away much of CCMI's sales staff and support structure. Shortly thereafter, CCMI's General Manager Fireman had no direct reports, no ability to control CCMI's budget and numerous projects.
- Ms. Raider and Mr. Fireman were excluded from strategy sessions about the business. On more than one occasion Paul Carlucci declared that he saw no future in targeted direct mail, which was the backbone of CCMI's business and the key to achieving the \$50 million dollar plan. His comments and

actions were consistent with the marginalization of Mr. Fireman and Ms. Raider's roles and responsibilities and NAM's intent not fulfill CCMI's business plan, but rather to break off CCMI's valuable pieces and use them to develop NAM's business elsewhere. Mr. Carlucci's comments also had the practical effect of sending a strong message to the sales staff that CCMI was not an important aspect of NAM's business and that others within the company would be ill served to support CCMI and assist in growing the business.

- NAM eliminated Ms. Raider and Mr. Fireman's position as a "thought leader" for loyalty marketing - CCMI spent years developing a reputation as a leader in loyalty marketing. Ms. Raider and Mr. Fireman attended trade shows, built client relationships and spoke at domestic and international conferences on the subject. Within one year after the sale, all trade shows were eliminated and all speaking engagements cancelled. Ms. Raider and Mr. Fireman were silenced in the marketplace and the brand equity and name recognition which CCMI had built over the preceding eight (8) plus years simply evaporated. Then NAM changed CCMI's name.
- NAM cancelled any and all trade advertising - As early as October 1999, CCMI was precluded from placing any trade advertising about its products under the CCMI name. NAM informed CCMI that there was no budget. Ms. Raider raised this issue with the Executive Vice President of Marketing who said CCMI would have support through their Public Relations firm. The Public Relations firm provided no assistance

- NAM did not provide the sales support to grow the business - The NAM sales force was reorganized in 1999. Chris Mixon directed the sales force to focus on NAM's sales goals which did not include CCMI products. Human Resources did not provide the required assistance to locate CCMI salespersons to call upon retailers. For example, CCMI was only provided with one new sales person after seven months of joining NAM. This failure caused CCMI to lose the ability to identify opportunities and close business transactions because there was no sales support to perform the sales function.
- For at least the first year after the purchase, the NAM sales force received little or no training concerning CCMI's product lines. NAM sales management refused to provide the time for the sales force to be trained and, as a result, the sales force had no knowledge (or financial incentive) to sell CCMI products.
- In the year 2000, NAM set in place a hiring freeze which precluded CCMI from hiring staff
- Other than a few individuals for at least one year, the duties of CCMI's manufacturer sales force were performed by the SmartSource.com sales force. The SmartSource.com sales force was directed to focus its selling their products as a priority, to their manufacturer clients and not CCMI's core clients.
- Without input from CCMI, the CCMI retail sales force was eliminated by NAM.
- CCMI was never permitted by NAM to be part of NAM's sales tracking

data base.

- CCMI did not have the required financial administrative support – The finance department was initially run by CCMI's Controller. While he was reassigned to the position of Vice President of Operations, for the following year he remained responsible for executing CCMI's accounts receivable and accounts payable function. NAM refused to provide additional personnel to CCMI to perform these functions. When the function was finally turned over to the NAM organization, they paid little attention to CCMI's accounts receivable and as a result they did not collect all the funds (or funds on time) and did not bill properly for items, resulting in decreased revenue.
- NAM controlled CCMI's staffing and salaries - All technical jobs at CCMI in Boston were eliminated and two employees were relocated to Connecticut. One individual was, in theory, to continue to help CCMI, but the other was to work on NAM projects. This resulted in a loss of CCMI's intellectual capital. NAM hired consultants to do this work instead of full time staff and this expense was charged against CCMI's allotted consulting fees. It was clear and agreed between CCMI and NAM that the consultant fees were to be used for marketing consulting. This misallocation of fees caused CCMI to be unable to retain proper marketing consultants necessary to expand the business. It was also used as a charge to CCMI causing Plaintiffs harm in the earn out calculation.
- In addition, CCMI's Vice President of Information Services was paid a salary of approximately \$80,000. After the sale, and upon conducting a review of salary levels, CCMI determined that this employee's salary was

too low and should be adjusted to reflect the market rate for an employee of his skill. NAM refused to adjust his salary. However, within 30 days, NAM offered this individual a \$50,000 salary increase to move to Connecticut to work for NAM's Information Services department. He accepted. This void left CCMI with no senior technical person in Boston. Within a few short months, this Vice President of Information Services was spending less than 50% of his time on CCMI projects and focusing the majority of his time for SmartSource.com. This is just one of many examples of NAM effectively taking valuable resources of CCMI and utilizing them to grow other aspects of NAM's business, all the while not making any effort whatsoever to replace the resources usurped from CCMI's operations.

- Ms. Raider and Mr. Fireman were prevented from hiring the sales staff they wanted. They were likewise precluded from determining when staff could be added and the salary necessary to attract quality employees. In fact, the personnel shortage was so substantial that CCMI was forced to "borrow" sales people from SmartSource.com to call on CCMI's manufacturer clients. Clearly, these sales people's focus was their own products and CCMI's sales objectives were never achieved.
- The company's reporting functions were divided so there was not one group driving the plan - The CCMI retailer and manufacturer sales forces were divided within NAM. Ms. Raider was in fact the only sales person on the retail sales force from CCMI remaining after one year and she reported to various people in

NAM such as Henri Lellouche, Pat Crock and Marty Garofolo. The CCMI manufacturer sales force continued to report to NAM's Henri Lellouche and then onto Marty Garofolo. There was no focus to drive the CCMI business plan as one company and as a result, the company suffered.

- NAM eliminated the Marketing Analysis (MAS) tool with no other product to replace it – CCMI had over 1,000 supermarkets using the MAS software to track their loyalty card holder programs. NAM unilaterally decided that CCMI would no longer support the software although CCMI had no other internal product to offer clients. CCMI spent the next sixty (60) days directing clients to other companies. CCMI lost client relationships and income as a result of NAM's decision not to "run" CCMI.
- NAM also delayed in funding software development and then mismanaged it. In particular, NAM refused to allow CCMI move forward with completing negotiations to upgrade its proprietary Customer Relationship Marketing Software. NAM required CCMI to wait until they hired a new Chief Information Office and Vice President of Information Services before proceeding. NAM eliminated all technology staff in Boston and forced the move of several technical people to Connecticut to work on NAM's base business and not CCMI.
- The contract to expand the software for CCMI was integrated into NAM's overall plans. As a result, CCMI was required to purchase more "seats" for the software than CCMI required. Nevertheless, CCMI was required to bear an unfair burden of the cost without the benefit. NAM's management of the project was inadequate, since no one at NAM had ever performed

support software, the integration of CCMI's product to the new platform was delayed eighteen (18) months. Thereafter, the software possessed numerous technical issues. The delay left CCMI without a primary tool for its core loyalty management services resulting in a huge loss of business to its competitors Catalina Marketing and Valassis.

- NAM's Senior Management seemed to have little or no interest in assisting CCMI to thwart competition – For example, when CCMI faced competition from Catalina at Pathmark, CCMI requested that Mr. Porco assist in scheduling a meeting with the President of Pathmark to defuse competition. He refused to do so but instead sent a sales representative days later. By this time, the business was already lost
- NAM did not fund the expansion of the business to keep pace with market trends – CCMI was prevented from expanding the gift card program for retailers. Even when CCMI identified a large market trend in "retailers" gift cards and prepaid products and services, and even where there was no capital outlay required. NAM refused to support CCMI. By way of example, when CCMI was awarded a \$30 million dollars, five (5) year contract to Ahold, NAM ordered CCMI to withdraw from that business as an accommodation to Safeway Marketing Services to secure other business opportunities for NAM, all to the detriment of CCMI and its strategic vendors.
- The Hispanic Market was large and growing and the community had a real need for a stored value money card. Even when CCMI fostered relationships with the White House, built relationships with major banks to

process the transactions and the Mexican business leaders who would promote the product, NAM refused to provide the internal resources or sales support to launch the program.

There are numerous other examples and Mr. Fireman reserves the right to supplement this response or otherwise discuss them in response to questions during deposition

INTERROGATORY NO.: 7

Describe in detail your job at CCMI (or its successor(s)) after it was acquired by NAM and how that job description differed from what you expected that job to be before you started it.

ANSWER NO.: 7

Mr. Fireman objects to this Interrogatory as it is overbroad and vague. Mr. Fireman also incorporates by reference his interrogatory responses 2, 5-6 and 10-12. Subject to these, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman states as follows:

Robert Fireman was the President and CEO of CCMI prior to the acquisition. NAM agreed that Mr. Fireman would continue to be the General Manager of the CCMI business unit. His employment contract confirms this position. Notwithstanding these indisputable facts, without discussion or agreement, Mr. Fireman's authority to manage the business, sales, personnel, finance, technology, strategy was removed and taken over by other NAM employees. Major business decisions were made without his knowledge or consent. Other employees were even given business cards similar to Mr. Fireman's, listing the same job title. Mr. Fireman was not allowed to continue to work

on the core businesses of CCMI. He was provided no budget, his administrative staff was removed, and at some point he was ordered not to be present in his Boston office.

Ann Raider was the co-founder of CCMI and the Executive Vice President. All of Sales Staff and Marketing reported to her. Her role included managing the retailer and manufacturer sales forces. All product development, creative services, client services, public relationships and strategic business relationships were led by her. Ms. Raider also managed the P&L. After being acquired, Ms. Raider no longer had any sales or marketing staff reporting to her and no P&L responsibility. She no longer managed any public relations and had no control over strategic business relationships to lead the sales and marketing for CCMI. Given NAM's commitments to her made in the context of the CCMI acquisition, Ms. Raider was supposed to manage an expanded sales force and interact with the national NAM and News Corp sales teams. She was to be actively involved in the product development and marketing execution. She was to continue to develop the consultative technological sales strategy of CCMI. She was to continue to support the Supermarket and Drug Chain Store associations with strategies to reach CCMI's retail base. After the sale, Ms. Raider's authority in all of these matters was either removed or marginalized to the point of irrelevance. Her consulting team was separated. She never got the time or the attention of any of the NAM's sales forces. Ms. Raider was not allowed to hire the sales people, and all these decisions were made by NAM. As budgets continued to be cut, Ms. Raider did not receive any of the staff necessary to implement the business plan. She was then directed to spend her time supporting the NAM retail sales team to sell products other than those of CCMI. To the marketplace, Ms. Raider was the Senior Vice President of News

America as witnessed in her business cards, but she was given essentially none of the attendant job functions or autonomy

INTERROGATORY NO.: 8

Describe in detail any efforts by Plaintiffs to build a sales force for CCMI.

ANSWER NO.: 8

Mr. Fireman objects to this Interrogatory as it is overbroad and vague. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman incorporates by reference his Interrogatory Responses 2, 5-7 and 10-12. Further responding, and as discussed in the preceding interrogatory responses, the Plaintiffs were not allowed to hire their own sales team and NAM's promised sales force was directed to focus their efforts on selling products other than CCMI's products and services. Any effort to argue for more support from NAM resulted in threatened reprimands

INTERROGATORY NO.: 9

Describe in detail any communications relating to any offers to form an alliance or business relationship with CCMI or to acquire or merge with CCMI, including but not limited to any and all terms of any such offers, the identify of the parties making such an offer, and CCMI's reasons for accepting or rejecting any such offers.

ANSWER NO.: 9

Mr. Fireman objects to this Interrogatory as it is overbroad, vague and neither relevant nor likely to lead to the discovery of admissible evidence. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman responds as follows:

CCMI was being sought for acquisition by companies looking to move into direct marketing and customer loyalty business sectors. They included First Data Corporation, Valasis, Catalina Marketing, Donnelly, RL POLK, GUS, Experian, and a venture group organizing a public company rollup

The Plaintiffs broke off negotiations and discussions with these groups when NAM made their commitments, promises and agreements with CCMI

INTERROGATORY NO.: 10

Describe in detail any assertions, promises, commitments, assurances, statements, representations, declarations or communications (collective as used in this interrogatory, "promises") that NAM made to CCMI, Raider or Fireman, as alleged anywhere in the Complaint or elsewhere, including but not limited to any promises made by NAM relating to a plan to operate CCMI as an autonomous division; to allow Fireman or Raider to continue to manage CCMI from Boston; Raider's or Fireman's role after the acquisition of CCMI, including but not limited to Raider's and/or Fireman's involvement in budgeting, projections, sales goals, making decision, management, strategy, technology purchase, hiring/firing/relocation of employees, or otherwise, including in your response, as to each promise, where such promise was made, to whom it was made, in what medium was it made, and whether there were any witnesses to such a promise.

ANSWER NO.: 10

Mr. Fireman objects to this Interrogatory as it is overbroad. Further objecting, it is unreasonable and harassing to require Mr. Fireman to identify "any assertions, promises, commitments, assurances, statements, representations, declarations or communications" between CCMI and NAM. Subject to these, as well as the above listed

General Objections, which are specifically incorporated herein by reference, Mr. Fireman incorporates by reference his interrogatory responses 2, 5-7 and 10-12 which identify numerous "assertions, promises, commitments, assurances, statements, representations, declarations or communications." These "assertions, promises, commitments, assurances, statements, representations, declarations or communications" were made numerous times at CCMI's office in Braintree, Massachusetts, on the telephone and in New York and Connecticut's NAM offices. These assertions, promises, commitments, assurances, statements, representations, declarations or communications were made by, among others, NAM's acquisition team, including but not limited to David Devoe Jr., Henri Lellouche and John Rubin. The assertions, promises, commitments, assurances, statements, representations, declarations or communications were confirmed several times by phone and at meetings and luncheons in New York at NAM's corporate offices attended by Paul Carlucci, Dominick Porco, Christopher Mixon, Jennifer Jenn, Wayne Campanelli, among others.

The financial plan approved by NAM upon the purchase of the business and specifically the budget developed in October 1999 demonstrate conclusively that CCMI was to be run separately, with CCMI using NAM's sales force. This is evidenced by, among other things, the lack of a large manufacturer sales force head count in the budget.

INTERROGATORY NO.: 11

Describe in detail what would have been necessary for CCMI to make an \$8.2 million sales goal from August 1999 to October 2000, as alleged in paragraph 10 of the Complaint, as well as your alleged reasons that CCMI did not make that goal.

ANSWER NO.: 11

Mr Fireman objects to this Interrogatory as it is overbroad. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr Fireman incorporates by reference his interrogatory responses 2, 5-7 and 10-12. Further responding, CCMI could have met its sales goals of \$8.2M if NAM had provided the sales and financial support as set out in the plan and run CCMI's business in good faith and as promised. Instead NAM stripped CCMI of its resources and further bogged down CCMI's remaining personnel with unnecessary corporate interference. Among other things, NAM immediately sought to move CCMI's corporate offices, offered CCMI's technical team jobs in Connecticut or terminated them without providing replacement personnel, limited the amount of trade shows and conferences CCMI could attend, refused to hire personnel the Plaintiffs requested, focused the Plaintiffs and CCMI's personnel on the problems of other business units within NAM, and refused to allow CCMI to have the support of the NAM sales force. These and other actions threatened most of the CCMI personnel causing loss of focus and performance. Efforts to argue to keep the CCMI's unit cohesive and together were met with reprimands from NAM executive management. The earnout numbers were negotiated and agreed upon based upon CCMI's historic earnings trajectory. The numbers were chosen as easy targets because the money was intended to be the second half of the purchase price for the business.

By way of example only, per Ms Raider and Mr. Fireman's letter to David DeVoe Jr dated October 22, 1999, CCMI was not attaining its goals that CCMI set out to achieve and as promised by NAM. By its letter of December 7, 1999, CCMI sought an

extension of the earnout date based upon NAM's admitted failure to provide the support promised and required. NAM admitted the problem and extended the earnout date. NAM's misconduct is further evidenced by Mr. Fireman and Ms. Raider's January 25, 2000 letter to David DeVoe Jr. These documents are incorporated herein by reference pursuant to Fed. R. Civ. P 33(c).

INTERROGATORY NO.: 12

Describe in detail your allegations, in paragraphs 13 and 15 of the Complaint, that NAM dismantled CCMI and/or made it impossible for Fireman and Raider to earn their bonuses; withheld the resources CCMI needed to grow its business; overpaid for software; used software purchased for the use of CCMI (or its successor(s)) to support other computer systems within NAM; refused input from Fireman and Raider relating to software or technology; "ostracized" Raider and Fireman; agreed to pursue new products but did not; assimilated CCMI into its other businesses; undermined Raider's and Fireman's role in managing CCMI, either by not including them in strategy decisions or budget approvals, or otherwise; and/or that NAM "forbade" Raider and Fireman from working on products.

ANSWER NO.: 12

Mr. Fireman objects to this Interrogatory as it is overbroad. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman incorporates by reference his interrogatory responses 2, 5-7 and 10-12 and further responds as follows:

CCMI was among a very few nationally known leaders of Card Marketing in the supermarket industry. Initial efforts to support the marketing of electronic gift cards into

the supermarket industry were rejected by NAM. This became a multi-million dollar win for CCMI competitors. CCMI tried to salvage some of this marketplace when it won the Ahold Contract for prepaid goods and services. NAM, without the Plaintiffs' knowledge and consent, pulled this business from CCMI in an unethical and possibly illegal side deal with a CCMI's competitor to the direct advantage and benefit of NAM's other business units. This is an example of how NAM cast aside and ignored CCMI's business interests for the benefit of NAM. The details of the events set forth herein are described in memoranda dated October 16, 2000 and January 24, 2001 to Chris Mixon. These memoranda are incorporated herein by reference pursuant to Fed. R. Civ. P. 33(c).

Further responding, rather than expand the proprietary software that was developed by CCMI, NAM made the decision to buy an off-the-shelf CRM software, Epiphany. David Benson, NAM's Chief Information Officer, made this decision, not because it would assist CCMI's business (which it did not), but rather because it supported the interests of NAM in that the software had numerous applications which would support and assist NAM. These applications were of no value to CCMI.

Mr. Fireman was not allowed to be involved in the negotiations for the software. Without the Plaintiffs' knowledge or consent, NAM purchased the software from Epiphany for an exorbitant price so the software would have unlimited users and licenses. This was totally unnecessary for CCMI's needs. More importantly, it utilized virtually the entire budget allowance for CCMI's business plan as set forth in the Acquisition Agreement. This also put CCMI in a negative cash position within the Acquisition Document and cost the Plaintiffs hundreds of thousands of dollars on their annual earn out formula.

INTERROGATORY NO.: 13

Describe in detail your allegation in paragraph 15 (ii) of the Complaint that "CCMI's key personnel were relocated or fired," including in that description the identity of such person, their current address and telephone number, and whether you believe that NAM "relocated or fired" them in bad faith, arbitrarily or irrationally.

ANSWER NO.: 13

Mr. Fireman objects to this Interrogatory as it is overbroad and vague. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman incorporates by reference his interrogatory responses 2, 5-7 and 10-12. Further responding, other than Bill Adam, Mr. Fireman is currently endeavoring to recall the names of the individuals and will supplement this response.

INTERROGATORY NO.: 14

Describe in detail any and all conduct of NAM relating to the allegations of your Complaint, that you assert were undertaken in bad faith, arbitrarily, irrationally or with any intent to injure Raider or Fireman.

ANSWER NO.: 14

Mr. Fireman objects to this Interrogatory as it is overbroad. It is unduly burdensome and arguably vexatious to seek a detailed description of all of the bad faith conduct that took place over the years NAM employed Mr. Fireman in an interrogatory response. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman incorporates by reference his interrogatory responses 2, 5-7 and 10-12. These interrogatory responses provide

substantial detail concerning NAM's arbitrary irrational and bad faith conduct, conduct which caused Plaintiffs substantial damages.

INTERROGATORY NO.: 15

Describe in detail whether you assert that you performed satisfactorily, after CCMI was purchased by NAM, your job responsibilities at CCMI (or it successor(s)), including but not limited to whether you met sales targets or quotas

ANSWER NO.: 15

Mr. Fireman objects to this Interrogatory as it is overbroad and vague. Subject to this, as well as the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman states that both he and Ms. Raider performed exemplary in their job responsibilities. To the extent sales targets or quotas were not achieved, it was due to the breaches and bad faith of NAM.

INTERROGATORY NO.: 16

Any and all documents relating to your allegation, in paragraph 15(v) of the Complaint, that changing CCMI's name resulted in losses of CCMI's good will.

ANSWER NO.: 16

Subject to the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman states as follows:

Partnerships are created to achieve better business results than would otherwise be accomplished alone. They accelerate time to market and expedite expansion which would result in increased sales and profits. NAM took CCMI's people, trade relationships and market intelligence for their best interest and not a partnership to drive CCMI. The market statistics demonstrate conclusively that repetition improves

overall ability to recognize brand claims and brand is associated with memory. A brand is an asset of a company which drives value to the corporation itself.

The CCMI brand was eliminated by NAM. CCMI was an independent company that had achieved an international reputation as a leader in loyalty marketing and had earned the respect of the retailers and manufacturers as a company they could trust in executing programs and holding customer data. The changing of CCMI's name caused at least two events to occur. First, CCMI no longer had a presence in the market place so the customers in the marketplace were not sure our entity even existed in the loyalty marketing industry. Plaintiffs missed out on sales opportunities since NAM refused to provide sales force and did not allow Plaintiffs to retain their presence at trade shows. Competitors aggressively built their businesses and took market share. The name change added confusion because Smart Source Direct was perceived as part of NAM, not an independent company with all the integrity and reputation as an industry leader.

INTERROGATORY NO.: 17

Describe in detail the basis for your assertion, in paragraph 17 of the Complaint, that NAM miscalculated CCMI's "Gross Margin" and/or Earn Out" or bonus payments pursuant to the Stock Purchase Agreement.

ANSWER NO.: 17

Subject to the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman does not contend in this lawsuit that there was an error in the mathematical formula by which the earnout was calculated. The Plaintiffs contend that NAM's bad faith, deception and breach of the covenant of

good faith and fair dealing precluded and prevented them from achieving the earn-out figures. Further responding and among other things, Plaintiffs do contend that NAM added expenses to the calculation which caused the earnout thresholds to be missed.

INTERROGATORY NO.: 18

Describe in detail the value of CCMI, including but not limited to any appraisals or studies, prior to its sale to NAM.

ANSWER NO.: 18

Mr. Fireman objects to this Interrogatory as it is overbroad, vague and neither relevant nor likely to lead to the discovery of admissible evidence.

INTERROGATORY NO.: 19

Describe in detail any and all payments you received from NAM, including but not limited to salary, bonus payments, "earn out" payments, commissions, other payments, including payments made for the acquisition of CCMI.

ANSWER NO.: 19

Mr. Fireman objects to this Interrogatory inasmuch as this information is already within the possession of NAM. To seek information from the Plaintiffs which NAM already possesses is harassing

INTERROGATORY NO.: 20

Describe in detail any and all damages you seek in this lawsuit.

ANSWER NO.: 20

Subject to the above listed General Objections, which are specifically incorporated herein by reference, Mr. Fireman states that CCMI had established itself as the industry leader in an emerging marketplace. If NAM had proceeded in good faith,

the Plaintiffs would have achieved each and every threshold necessary to achieve the maximum amount possible under the earnout formula. The NAM projection developed to determine the earn out percentages was presented by NAM's CFO as a conservative guesstimate of revenue that would be paid to Plaintiffs. This projection was over Fifteen Million (\$15m) dollars. Plaintiffs' damages also include an additional payment (up to a cap) on revenues above a certain point.

INTERROGATORY NO.: 21

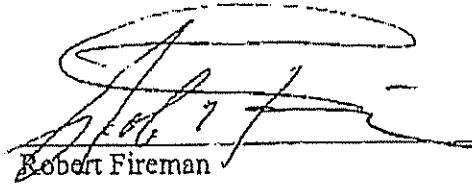
Describe in detail all communications between Raider and/or Fireman and NAM, including, but not limited to, communication relating to NAM's calculation of CCMI's (or that of its successor(s)) Gross margin, as that term is used in the Stock Purchase Agreement; either Plaintiffs' job performance; goals, benchmarks, sales targets or the measures of performance of CCMI (or its successor(s)); terms and/or duration of Plaintiffs' employment at NAM, CCMI or CCMI's successor(s); "Fireman and Raider's requirement of no less than \$8 million for the sale of CCMI," as alleged in paragraph 13 of the Complaint; or payments to Raider or Fireman.

ANSWER NO.: 21

Mr. Fireman objects to this Interrogatory as unduly burdensome and vexatious. He also objects to the extent it purports to seek the disclosure of conversations he had with counsel. Further responding, in conversations with David DeVoe it was made clear that Plaintiffs would have "no trouble" reaching the earn out in the two years yielding the \$8 million for the company based on NAM delivering its obligation.

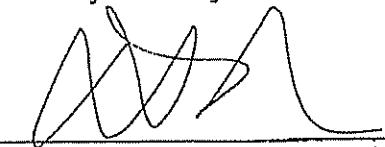
Signed under the pains and penalties of perjury this ____ day of November,

2006



Robert Fireman

Attorney as to Objections



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Dated: November 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document
was served upon the attorney of record for each other
party by mail-hand on 11/27/06



EXHIBIT H

Mixson, Christopher

July 18, 2007

New York, NY

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----x
ROBERT FIREMAN and ANN RAIDER,

Plaintiff,

Civil Action No.

-against- 05-1740MLW

NEWS AMERICA MARKETING IN-STORE,
INC.,

Defendant.

-----x
July 18, 2007

11:43 a.m.

Deposition of CHRISTOPHER MIXSON, taken
by the Plaintiffs, pursuant to Notice, at the
offices of News Corp, 1211 Avenue of the
Americas, New York, New York, before David
Levy, CSR, a Notary Public of the State of New
York.

Mixson, Christopher

July 18, 2007

New York, NY

160

1 corporation.

2 Q. They weren't allowed to direct the
3 business activities of SmartSource Direct. You
4 would agree with that.5 A. I think -- no, I -- well, if your
6 question is, were they empowered to contribute to
7 that enterprise? I would say the answer is yes.
8 If the question is, were Bob and Ann given
9 indiscriminate authority to do as they pleased
10 with a company that had just been purchased by
11 News America Marketing, the answer so that is no.12 Q. Was Bob Fireman allowed to be the
13 general manager of SmartSource Direct?14 A. I think for a limited period of time,
15 Bob served as the general manager. I think as
16 time progressed, and the company continued to
17 develop, you know, bigger and bigger doubts about
18 his leadership skills, I think that Bob had that
19 general manager, what you'd normally associate
20 with general manager responsibilities
21 successively withdrawn.

22 Q. Do you remember when that happened?

EXHIBIT I

Garofalo, Martin

July 17, 2007

New York, NY

1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

-----x
ROBERT FIREMAN and ANN RAIDER,

Plaintiff,

Civil Action No.

-against- 05-1740MLW

NEWS AMERICA MARKETING IN-STORE,

INC.,

Defendant.

-----x
July 17, 2007

10:02 a.m.

Deposition of MARTIN GAROFALO, taken by
the Plaintiffs, pursuant to Notice, at the
offices of News Corp, 1211 Avenue of the
Americas, New York, New York, before David
Levy, CSR, a Notary Public of the State of New
York.

Garofalo, Martin

July 17, 2007

New York, NY

40

1 A. It's hard to evaluate. I'd probably
2 say no.

3 Q. Did Seth Epstein?

4 A. I'd say, looking back, no.

5 Q. So who within News America Marketing
6 other than Ann Raider and Bob Fireman had
7 expertise in card distribution and card
8 marketing?

9 A. At the time of the acquisition, it
10 would be those two individuals you just
11 mentioned.

12 Q. Did anyone during your
13 year-and-a-half with the IGroup develop expertise
14 in card marketing other than Ann Raider and Bob
15 Fireman?

16 A. I think the answer is yes.

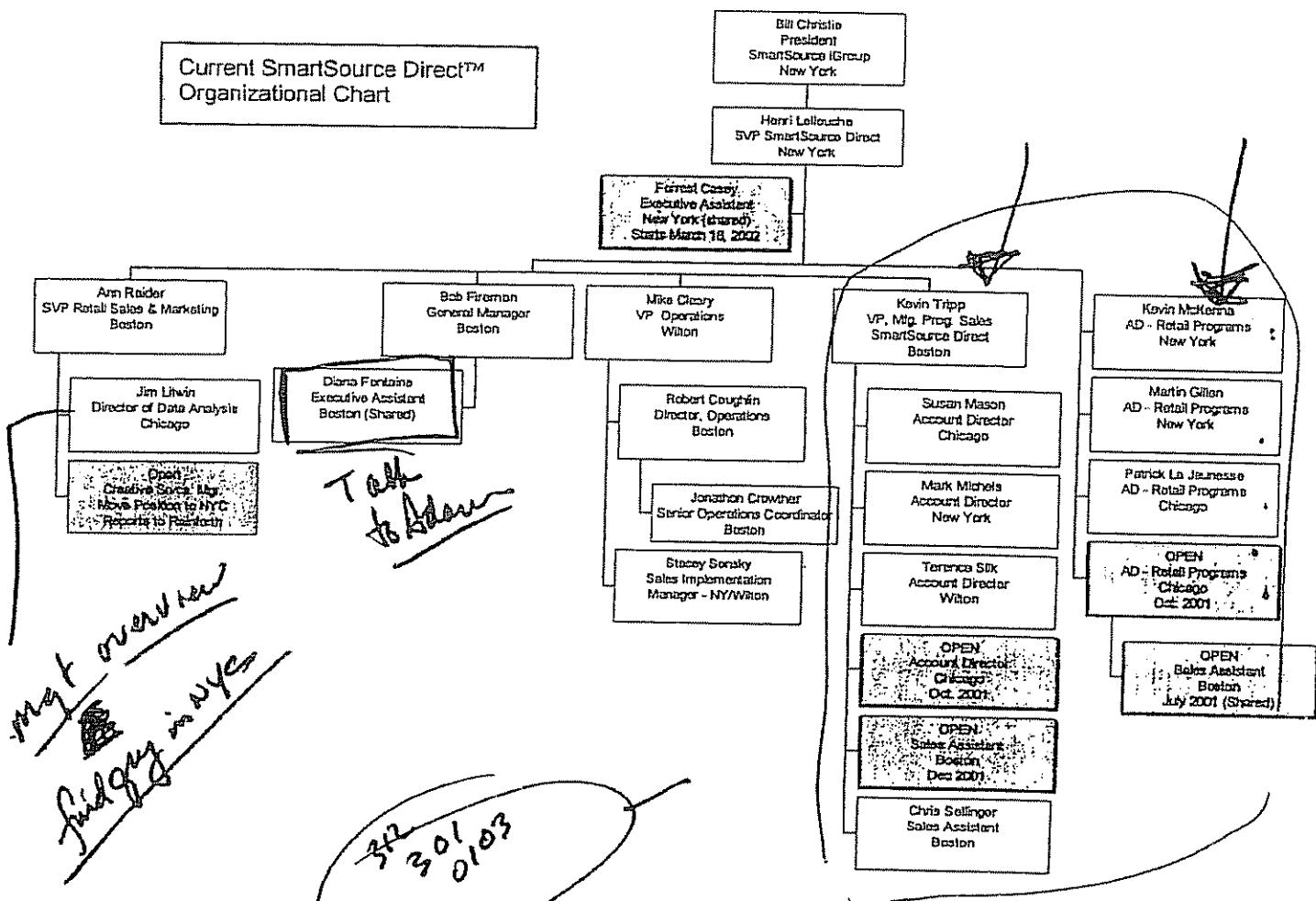
17 Q. Who would that person be, or people
18 be?

19 A. To an extent, myself and definitely
20 Henry, would be my thinking.

21 MR. KATZ: Ken, could we take a break
22 when you have --

EXHIBIT J

SmartSource Direct Strategies
March 14, 2002
Management Overview



FY 2002 Year In Review

- Supervisory re-organization relieves Fireman of Operations and Raider of Retail Sales responsibilities.
- Re-organization of the Operations Team and knowledge transfer of CCMI operational expertise is complete.
- Full Staffing (short of headcount freeze positions) was achieved in October 2001 for the first time since acquisition of CCMI in 1999.
- Henri Lellouche becomes direct supervisor of individual Retail Sales Staff. Lellouche manages Tripp, the three retail AD's and Raider directly.
- Average tenure of the Retail and Mfr. AD's is approaching seven months. Sales data suggests that sales productivity becomes meaningful after six months of individual service.
- Sales Performance Statistics
 - Average Manufacturer Sales Calls/Week – 9.4 for AD's; 6.3 for Tripp
 - Average Retail Sales Calls/Week – 3.4

Solve

EXHIBIT K

hellouche@newsamer, 04:58 PM 6/1/00 -, SSD Recognition

To: hellouche@newsamerica.com
From: Ann Raider <araider@smartsourcedirect.com>
Subject: SSD Recognition
Cc:
Bcc:
Attached:

Dear Henri:

I would like to share with you again my concern about the lack of internal (inside NAM) and Marketplace recognition SSD is receiving, or rather, not receiving. Our sales are not mentioned at Monday executive meetings; the senior managers across NAM still do not know what we do, and we are the last company mentioned in the SmartSource iGroup website, looking like an afterthought.

The purchase of E.Piphany software and the expansion of our database management capabilities has gone unnoticed in the Marketplace. NAM's PR firm has not secured editor attention on what we now have to offer. Our competitors have continuous press about their accomplishments.

Henri, we desperately need to build awareness of what we can offer retailers and manufacturers.

Ann

EXHIBIT L

hlellouche@newsamerica.com, 04:50 PM 6/1/00 - , Retailer Summit Meeting

EXHIBIT NO. 6

525-07 G

To: hlellouche@newsamerica.com
From: Ann Raider <araider@smartsourcedirect.com>
Subject: Retailer Summit Meeting
Cc:
Bcc:
Attached: H:\Ann\DailyCorrespondence\Budget Items for June 1 meeting.doc;

Dear Henri:

The June 1, 2000 Retail Summit Meeting to gain Retailer insight/commitment for our ASP has been cancelled five days before it was scheduled and three weeks after the initial invitations went out. Senior management made the decision. The issues/hurdles SSD faces as a result of the decision include:

- A question as to the quality of our product
- The time/money it will take to reschedule 2 individual meetings
- Delay in securing sales for 500 stores (in the Plan)
- Question of my and SSD's integrity and credibility

There are significant benefits in conducting a Retailer Summit:

- Showcase the new product in a controlled environment
- Gain insight from the Retailers about the product.
- Positioning Retailers to purchase it asap
- Accelerate the sales process 7 Retailers at once
- Cost effective sales approach (see Exhibit 1 attached)
- Reinforce our Retail relationships for other business

We have prepared a summary of the travel costs to conduct the Summit (Exhibit 1), for the Retailers who were scheduled to attend. Although, today, I am unclear as to who would attend in the future, the costs would be about the same. *Consider for a minimal \$5,000 investment, we could realize sales of millions.*

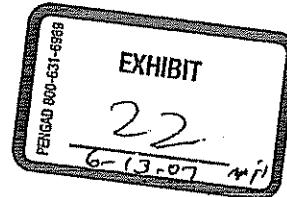
Henri, could we please seek management approval

Ann

EXHIBIT M



October 22, 1999



Mr. David DeVoe, Jr.
Executive Vice President, Chief Financial Officer
News America
1211 Avenue of the Americas, 5th Floor
New York, NY 10036

Dear David:

As we develop the Consumer Card Marketing, Inc. (CCMI) plan for FY 2000 we are gravely concerned that CCMI is not attaining timely the goals we had set out to achieve in this merger. We built a three month cushion in our earn out period to enable CCMI to hire three Vice Presidents, train the NAM sales force and work through the various operational issues of the merger so that we would be in full stride by the first of October. We are now approaching November and have not significantly accomplished any of these tasks.

At our August 25, 1999 meeting in Braintree we further set priorities for the next 30 days.

- Purchase of equipment for Duane Reade project
- Staffing – hire three (3) Sales Vice Presidents and Database Executive
- Establish policy – integration with NAM
- Implement CCMI information sessions at NAM
- Develop sales/profit budget and plan by product line

The process is taking far too long. The hardware for Duane Reade was finally all ordered on October 18th. NAM did not approve two of the three key hires we proposed and now, the third, for personal reasons, is no longer a candidate. Kevin Tripp has just started. While Stephanie Nix is working hard to help find qualified sales candidates; she is just now contacting recruiters. While we have discussed scheduling meetings with the NAM manufacturer sales management team, we are told they are too busy or committed to other NAM ventures. Only in the last few weeks have we had support from Jeff Jensen and his group.

David, the negotiation of the deal was a major digression for the company. We wanted to come out of the closing at full speed. We want CCMI to be the leader of News America Marketing's initiative into loyalty marketing and customer specific marketing. We need to utilize NAM's expertise, personnel, and relationships to drive our business to the levels we seek. Instead, we have not added the people we need, and against our wishes are still discussing the separation of people and systems we use to run our business and service our clients. These discussions have taken place around us, undermining our authority with our own staff, while intimidating our employees and their families.

We knew it would be a process but we didn't know it would take so long and with limited staff we are spending a major share of time doing inter-corporate functions. However, we are not where we wanted or planned to be at this time, and we need you to know it. Please see if the NAM Human Resource group can be more aggressive in finding the key people or possibly retaining a recruiter to go after people not in the market. Please continue to get us timely support quickly from Dave Benson's group. Please continue to help us find the solutions we need so that CCMI can move forward faster. We need to have a powerful, clear message at Marketechnics 2000 with people and systems in place.

Thank you:

Consumer Card Marketing, Inc. • 165 Wood Road, Braintree, MA 02184
 (781) 356-7080 FAX (781) 843-6741

EXHIBIT N



Memo

Lellouche
EXHIBIT NO. 3
5/25/07 c

To: Henri Lellouche
From: Ann Raider
CC:
Date: 05/18/00
Re: A Review of Outstanding Items of Concern

I remain very concerned about my ability to drive the sales for SSD. My concern is founded in 3 issues:

1. **No Staff** – It has been weeks since I have seen a resume for the two open Director positions and I have yet to see a resume for Account Coordinator. Last Wednesday, Denise told me that due to the lifting of the hiring freeze (which I was not aware of), she had far too many positions to fill and could not service my positions. Rather she was referring my requests to someone in NYC. No one in NYC has contacted me. Precious time continues to pass and weeks are months with inadequate staffing.

We have greater than 200 opportunities we could pursue. These are opportunities created from all of the trade shows and conferences we have attended this year and include businesses with current customers.

2. **Retailer Marketing Program** – With no staff, I focus all my energy into pursuing sales opportunities and maintaining current customer relationships. As a result, I do not have time to develop products/services to sell to the retailers (e.g.) Kids Club. We are a marketing company but have no marketing products to offer.

3. **Public Relations Support** – CCMI had a marketplace leadership position in loyalty marketing. We built this reputation with customers and through recognition in the press – catalogs and trade publications which focus on loyalty marketing.

Henri, I would like to spend time with you and Chris discussing these issues as soon as possible.

EXHIBIT O



MEMO

Confidential

TO: Chris Mixson
FROM: Bob Fireman
SUBJ:
DATE: October 17, 2000

I am writing this memo to provide you an overview of the situation Ann and I are now facing with News America. The first period of our earnout was completed this October first. We ask that you investigate what NAM is prepared to do so that we might protect our rights.

With the time to market being critical in light of aggressive competitive actions by Catalina and Valassis, Ann and I agreed to sell Consumer Card Marketing Inc. (CCMI) to NAM. We made it a complete sale rather than other forms of loan, investment, or alliance because we wanted the full commitment of the NAM organization and believed CCMI becoming NAM would be the most powerful message to the marketplace.

Ann and I were going to run the business. NAM would provide capital to expand all our resources: new hires, technology, Sales, Marketing.

The price requested was \$8MM cash and a five year earnout based upon the results we could drive. David DeVoe Jr. negotiated the final deal to about \$3 million cash and the earnout and replaced the other \$5MM cash with earnout bonuses of \$2.5 MM in each of the first two years. A three month ramp up period to get the resources together was built in so that the sale in August had the first earnout period ending October 1, 2000 and then annually. Based upon the agreed financial plan this was a \$15mm+ deal.

The earnout included 16.8%, 14.5%, 13.75%, 13.3% and 12.9% of the defined gross margin of the Company in each of the following five (5) years beginning October 2000.

The issues:

- NAM never provided the resources it promised that were necessary to grow the business.
- NAM never empowered us to run the business.

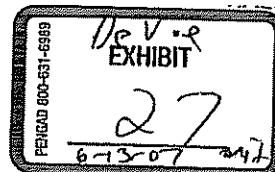
- NAM divided and assimilated CCMi's technology, personnel, resources, and know how.
- NAM seldom included our input into any key decision relative to the business.
- We have had no involvement in the approval of budgets or projections and, to this date, have never seen financials sufficient to calculate our earnout.
- NAM removed all control and ability for us to drive the business and make the agreed upon Plan or earnout.
- We had to fight to keep our presence at our Industry Trade Shows. All our advertising and public relations was stopped.
- NAM created its own Financial Plan for revenue and resources. This Plan will not allow us to make our bonuses or projected earnout.
- Any action by us to object was considered action against the Company and we were isolated and even reported to the Chairman for reprimanding.
- The Company as defined in our agreement is now the SmartSource iGroup ; our name was changed; our new products never built; our technology removed; key personnel of CCMi have been relocated and terminated. Our ideas were placed on hold.

As a result of NAM's action, News America Marketing and us are a year behind in the development of the required staff, technology and resources to grow this business into a \$100M+ business. Our ability to make our earnout to complete the sale has been denied us. Our competitors such as Catalina, Valassis and others have made significant investments and acquisitions in this timeframe and have made a full effort to expand into areas of Loyalty Marketing, CRM technology, database marketing, Internet and In-Store delivery systems. Therefore, our competitors are more formidable than they would have otherwise been..

When we spoke the other day you asked me to lay out the issues. I hope that this memo gives you sufficient background and insight to bring this to a speedy resolution. If there is any other information that you need please ask,

Bob

EXHIBIT P



165 Wood Road, Braintree, MA 02184
 781/356-7080 FAX 781/843-6741
www.smartsourcedirect.com

September 11, 2000

Mr. David Devoc Jr.
 Executive Vice President, Chief Financial Officer
 News America Marketing
 301 Merritt 7
 Norwalk, Connecticut 0685

Dear Dave:

We are encouraged News America, through your efforts, made the commitment to the SmartSource I Group and included the products, services, concepts, and remains of Consumer Card Marketing (CCMI) as its core strategies. Loyalty Marketing and building customer relationships will be the bridge for the bricks to clicks and become a competitive advantage for SmartSource.Com. We are pleased Chris and Henri are now including us in some of the strategic discussions with the I Group executive management team.

We believe in this company and remain convinced with the right tools we can grow the business. In fact, as you well know, we felt so strongly about CCMI's potential we agreed to structure a significant amount of the purchase prices in the form of an earnout on future income. We were convinced that CCMI's alliance with News America Marketing (NAM), and the resources available by virtue of that alliance would virtually guarantee we would meet our targets.

Unfortunately, the commitments, which led us to sell CCMI to NAM, have not yet materialized. Rather than reinforce and supplement CCMI's resources NAM has taken our essential talent and marginalized our roles in directing the growth of the business. Instead of letting us build upon our business with NAM's support, NAM took a course to assimilate CCMI concepts, products, and personnel into NAM business units. The intent of the deal was for us to lead this division of NAM. NAM was to assist us with capital for immediate key hires and expanding our technologies. NAM was also to accelerate our growth through the immediate use of its retailer and manufacturer experienced sales forces. Time to market was essential. Bob was to be General Manager with everyone reporting to him. Ann was to hire new groups of marketing and sales executives.

In the immediate months that followed the sale, attempts to get essential new hires were unsuccessful due to NAM policies, procedures, hiring freezes, and the integration of NAM sales forces. As of today, we still do not have hired key sales people to support our original sales plan. We continue to lack technical support to properly support our clients. Notwithstanding, our substantial knowledge of our business, we were simply kept off the management team and not allowed to be involved with any of the essential business decisions. Today, only two operation employees report to Bob. Until last week, Ann had only one salesman reporting to her. Kevin Tripp, our only key hire and the person we trained to sell programs to manufacturers, has been removed from our management and now reports to Marty in the I Group. Moreover, we have been removed from all financial, technical, and personnel decisions. We only have limited knowledge of and input into the budget, and have never seen the P&L's for our division. We are told that the revenue from the I Group and commercial applications group will go to our earnout, but have yet to see its P&L so we can gauge where we are in terms of our earnout targets. We have been told that our earnout created a conflict of interest and on that basis we have been excluded from decision making and management. However, no one from NAM has offered to resolve what they consider a conflict or looked to find any resolution. To compound the issue



A NEWS CORPORATION COMPANY

September 11, 2000
Page 2



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when we objected to actions we believed directly contradicted our deal and our personal return of our earnout; we were labeled as problem employees and removed further from managing our business. This has now become more apparent as we reviewed the comments in our annual self-appraisals.

We are concerned about the effect NAM's actions have had, and will have, on the Gross Margin of CCMI and its successors SmartSource Direct, the I Group, and other NAM business units. We have discussed this with Jon, Henri, and Paul. Paul advised us to accept corporate decisions and things would work out. In the meantime, he would have someone get back to us. We have complied with his advice. No one has ever gotten back to us. We rededicated ourselves to do whatever we could to assist Chris, Henri, and the NAM organization to grow the business and be successful. We do whatever we are asked and accept management decisions. We work long hard hours networking our industry relationships each day to generate positive results for News America. Giant Foods, Epiphany, Toshiba, CompUSA, EMS, Upromise, Marsh, and others will add value to the company.

Dave, as CFO and the person who made this deal with us as head of the NAM New Ventures Group, we are asking you to address and resolve our concerns. We do not want these issues to impact the good working relationship we now have within the Igroup and the Company. There are two issues:

1. Employment Contract
2. Earnout and Bonuses

It is apparent that the negative comments in our self-appraisals originate from our resistance to NAM actions or inaction that we believed were inconsistent with the terms and spirit of the Purchase Agreement. Yes, we resisted the breakup of our business unit. Yes, we were concerned when management action was taken directly without our knowledge or input that embarrassed and undermined us with our staff. Yes, it was disturbing to learn that Jon Rubin was working to replace Bob as the manager of our business unit and he was our link to the NAM organization. The issue here is that NAM did not separate our performance as employees from our personal issues, and accordingly, unfairly hurt our professional record and reputation within the organization. In the negotiation of our employment agreements it was represented that NAM could not increase our beginning base because of internal standards already set but that we would receive 20% bonus and annual base consistent with the top management executives of News America. We may have fought for what we contracted to get from NAM, but we also have worked long and hard as senior managers for the company. It is not fair to penalize us for the issues of the Purchase Agreement. We ask that our appraisals be reviewed again, and our bonus and raises be reconsidered.

Under the Stock Purchase Agreement our purchase price for the first payment period is to be increased by 16.8% of the companies Gross Margin plus either \$2.1 million or \$2.5 million depending on the amount of the Gross Margin on October 1, 2000. In, addition, there are sales incentives for four additional years for millions of dollars. These dates and the amounts are obviously very important to us. Given NAM's approach to our business, our ability to earn what we are entitled to under our agreement has been substantially eroded.

In fairness to us, NAM needs to modify our agreement and commit itself to living up to the obligations that lead us to sell it CCMI. As NAM has restructured our business over a variety of business units, and NAM

September 11, 2000
Page 3



165 Wood Road, Braintree, MA 02184
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needs to recognize that it is taking significantly longer than anticipated to provide appropriate resources. In addition, it needs to confirm how they are booking revenue from what business units in what time frames to fairly allow us to earn our money. We also continue to require resources to manage and grow the business.

We are talented and experienced business executives with the dedication and loyalty to take the business to a level we all know it is capable of reaching. We built the deal on the mutuality of interest to work for the success of the business. We want to be included in the management team, and want NAM to capitalize on our vision and hard work. We do not want any conflicts with the organization. If NAM has conflicts let us identify them and correct them. We share the same goals to build sales and profits. We are not only prepared but also enthusiastic about making News America Marketing and the IGroup the leader in this emerging marketplace. We are committed to NAM, and are simply requesting that NAM reciprocate that commitment, live up to the commitments that lead us to sell our company, and resolve our personal issues.

Thank you,

Robert Fierman

A handwritten signature in black ink, appearing to read "Robert Fierman".

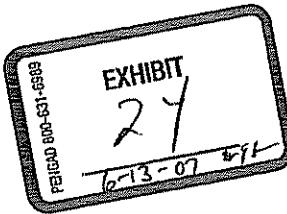
Ann Raider

A handwritten signature in black ink, appearing to read "Ann Raider".

cc. C. Mixson

A News Corporation Company

EXHIBIT Q

CONFIDENTIAL

December 7, 1999

e-mail message

Mr. David DeVoe
News America Marketing

Dear David:

In August 1999, NAM acquired CCMI with the mutual goal of driving profits through the use of technology and customer specific purchase data. Our contract was consummated based on the commitment of NAM to provide CCMI with capital to hire the required staff, enhance the technology, and leverage the NAM retailer manufacturers sales force – time to market being critical. With that in place, CCMI would expand rapidly and drive sales and profits to new levels.

Over the past 120 days, the specific objectives set by NAM to accelerate CCMI's growth are not being met. I am gravely concerned CCMI will be unable to achieve our sales or profit objectives within the timeframes we agreed.

This memo, written in the early morning hours on my way to Buffalo, will outline the details of the missed objectives, as I have already shared with Jon and Ian, and proposed recommended actions.

• **Sales/Marketing Staff**

It was agreed that building the sales force was to be a top priority in August 1999. However as of today, we are operating without key people.

- CCMI was prevented from hiring a West Coast sales person because his residence is San Francisco. Notwithstanding, it took NAM 45 days to begin an aggressive search process for another West Coast person. To date we have only a few candidates with whom we can arrange second phone interviews with, let alone a personal interview.
- CCMI recently, as a final resort, selected a NAM employee to fill the East Coast sales role. Even though you and I agreed on salary and I thought, title, three weeks after our original conversation, the offer presented by me was changed resulting in the individual not taking the position. This is a person who, while not having the total skills required for the job, had good trade relations and a willingness to learn. More importantly, he would have helped me start an aggressive sales initiative, even at this late date. My credibility and CCMI's may have been tarnished within the NAM organization and we are most likely missing sales opportunities in the marketplace.

• **Leverage the NAM Sales Force**

The NAM Sales organization is under siege. The company is behind its profit plan and has suffered the loss of several key sales executives. In addition, the workload for current Sales staff has increased with the recent reorganization. They have been more focused on the products of the companies in which NAM has made limited investments (i.e. Planet U, Softeard). The support promised by NAM and required by CCMI has not been provided timely. We were told to wait until January to get help from the manufacturer sales force and we have only recently made some progress with the retail sales force. This is not to say

executives responsible for these businesses do not believe in our opportunity and have the desire to help. Rather, to point out CCMI is suffering from a NAM problem beyond our control.

- **Technology Support**

NAM made the decision to move the responsibility for the maintenance of our software products and the future development of the next generation of software products and services to the new NAM Technology Group. This change was made after our closing. However, the assumption of these responsibilities has not significantly begun.

Dave Benson has no one in place to help design or manage the process. While NAM has instructed CCMI personnel that they will not be performing these functions in the future, today it is necessary to assume other responsibilities. This is not helping us move forward but only keeping the status quo for our existing clients. CCMI is facing its industry show without a clear plan of its future products or capabilities.

- **New Product Development**

I spent my weekend outlining a new product offer. You and I had shared the vision that this could be a great opportunity... the Kids Club. This program, as outlined, has been with Julie and John for 4 weeks. They promised to help me quantify the opportunity and, to date, I still have no response and Kroger will surely do this project with someone else.

David, January 2000 is days away. To be prepared to strive toward the \$750M plan you had developed, to attempt to make our mutual sales and profit goals, I am suggesting specific actions be taken in the next thirty days and CCMI become NAM's top priority.

- **Recommended Actions**

1. Ian Moore, as he has already graciously offered, become actively involved in the hiring process for West Coast and East Coast sales people. He will be meeting with a few candidates next week in California. The goal is to find and hire these people by the end of the month. Ian must make this his priority.
2. Deliver a list of the new manufacturer sales force and its divisional leaders and request Chris Mixson to call all of his VIPs and have them work directly with Kevin to set up multiple meetings, immediately.
3. Arrange for CCMI to present to the entire NAM Sales organizations what we do... our benefits so all sales staff will identify and refer opportunities to our business right now.
4. The manufacturer product line materials be completed by January 20, 2000. This means one person from marketing should have this assigned as a top priority and complete the name change.
5. John and Julie work with me to determine the financial viability of The Kids Club program.
6. David Benson hire the people to satisfy our technology requirements and spend a day at CCMI *immediately* to work with us to build a plan for completing CCMI software

development and production maintenance. Marketronics is in February 22, 2000 and we need to announce our plan to the marketplace.

7. Establish a CCM Executive Group consisting of you and I, Dave Benson, Jon Rubin, Bob Fireman, Bill Adam and Jennifer and that we meet or conference every two weeks to review our progress.

In closing, I have one final and personal request: that NAM modify the company Purchase and Sales Agreement to extend the earn-out bonus periods from October 2000 to December 2000 to compensate for the issues outlined in this letter.

David, we are in this deal together. You know I am committed to achieving our mutual success. We need to win, together, right now. The marketplace is open to companies with our experience and skill. I will call you on Wednesday to discuss my recommendations.

Sincerely,

Ann M. Raider

Cc: I. Moore
R. Fireman